AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# FEDERAL REGISTER

Vol. 78 Friday,

No. 230 November 29, 2013

Pages 71435–71986

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 77 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **202–512–1806** |

**General online information** **202–512–1530; 1–888–293–6498**

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–741–6005** |
| Assistance with Federal agency subscriptions | **202–741–6005** |

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 78, No. 230

Friday, November 29, 2013

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

**Army Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71583–71584

**Blind or Severely Disabled, Committee for Purchase From People Who Are**
*See* Committee for Purchase From People Who Are Blind or Severely Disabled

**Centers for Disease Control and Prevention**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71615–71617

**Centers for Medicare & Medicaid Services**
PROPOSED RULES
FY 2015 Applications for New Medical Services and Technology Add-On Payments:
Town Hall Meeting, 71555–71557
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71617–71619
Medicare and Medicaid Programs:
American Osteopathic Association/Healthcare Facilities Accreditation Program's Critical Access Hospital Accreditation Program; Continued Approval, 71619–71620

**Civil Rights Commission**
NOTICES
Meetings:
New York Advisory Committee, 71562–71563

**Coast Guard**
RULES
Regulated Navigation Areas:
Portsmouth Naval Shipyard, Piscataqua River, Portsmouth, NH, 71495–71497
Special Local Regulations:
Lake Havasu City Christmas Boat Parade of Lights; Colorado River; Lake Havasu, AZ, 71493–71495
PROPOSED RULES
Safety Zones:
Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY, 71546–71549
Special Local Regulations:
Tavares Winter Thunder Vintage Race Boat Regatta, Lake Dora; Tavares, FL, 71543–71546
NOTICES
Tank Vessel Oil Transfers, 71633–71634

**Commerce Department**
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
*See* Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71563

**Committee for Purchase From People Who Are Blind or Severely Disabled**
NOTICES
Procurement List; Additions and Deletions, 71581–71583

**Commodity Credit Corporation**
NOTICES
Environmental Impact Statements; Availability, etc.:
Conservation Reserve Program, 71561–71562

**Comptroller of the Currency**
PROPOSED RULES
Liquidity Coverage Ratio:
Liquidity Risk Measurement, Standards, and Monitoring, 71818–71868

**Copyright Office, Library of Congress**
RULES
Copyright Office Fees:
Cable and Satellite Statement of Account Fees, 71498–71501

**Copyright Royalty Board**
RULES
Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities, 71501
Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates, 71501–71502

**Defense Department**
*See* Army Department
*See* Navy Department

**Drug Enforcement Administration**
NOTICES
Decisions and Orders:
Zizhuang Li, M.D., 71660–71665

**Education Department**
PROPOSED RULES
Assistance to States for the Education of Children with Disabilities, 71549–71550
NOTICES
Applications for New Awards:
Community Living and Participation, Health and Function, and Employment of Individuals with Disabilities, 71584–71590
Meetings:
National Assessment Governing Board, 71590–71591
Privacy Act; Computer Matching Program, 71591–71592

**Employee Benefits Security Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71668–71671

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Charter Renewals:
National Coal Council, 71592

**Environmental Protection Agency**
RULES
2013 Revisions to the Greenhouse Gas Reporting and Final Confidentiality Determinations:
New or Substantially Revised Data Elements, 71904–71981
Air Quality State Implementation Plans; Approvals and Promulgations:
New Hampshire; Transportation Conformity and Conformity of General Federal Actions, 71504–71508
Tennessee; Revisions to the Knox County Portion of the Tennessee State Implementation Plan, 71502–71504
Delegations of Authority:
Iowa; Kansas; Missouri; Nebraska; Lincoln–Lancaster County, NE; and City of Omaha, NE; New Source Performance Standards, etc., 71510–71523
Federally-Enforceable State Implementation Plans for All States; Availability, 71508–71510
Pesticide Tolerances:
Quinclorac, 71523–71528
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Colorado Second Ten-Year PM10 Maintenance Plan for Telluride, 71550–71554
New Hampshire; Transportation Conformity and Conformity of General Federal Actions, 71554–71555
Renewable Fuel Standard Program; 2014 Standards, 71732–71784
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71603–71605
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program, 71606
Environmental Impact Statements; Availability, 71606–71607
Renewable Fuel Standard; Petitions for a Waiver, 71607–71609
Requests to Voluntarily Cancel and Amend Registration(s) to Terminate Certain Uses:
Methiocarb, Lambda–Cyhalothrin, Permethrin and Prodiamine, 71609–71611

**Executive Office of the President**
*See* Presidential Documents

**Farm Service Agency**
NOTICES
Environmental Impact Statements; Availability, etc.:
Conservation Reserve Program, 71561–71562

**Federal Aviation Administration**
PROPOSED RULES
Airworthiness Directives:
Rolls-Royce Deutschland Ltd and Co KG Turbofan Engines, 71532–71534
NOTICES
Noise Exposure Maps:
Laughlin/Bullhead International Airport, Bullhead City, AZ, 71706–71707

**Federal Communications Commission**
PROPOSED RULES
Radio Broadcasting Services:
Tohatchi, New Mexico, 71557

**Federal Deposit Insurance Corporation**
PROPOSED RULES
Liquidity Coverage Ratio:
Liquidity Risk Measurement, Standards, and Monitoring, 71818–71868

**Federal Election Commission**
NOTICES
Meetings; Sunshine Act, 71611

**Federal Energy Regulatory Commission**
RULES
Regional Reliability Standards:
BAL–002–WECC–2; Contingency Reserve, 71448–71457
NOTICES
Applications:
Appalachian Power Co., 71595
Free Flow Power Missouri 2, LLC, 71592–71596
Combined Filings, 71596–71599
Environmental Assessments; Availability, etc.:
Copper Valley Electric Association, Inc., 71599
Transcontinental Gas Pipe Line Company, LLC, 71599–71601
Petitions for Declaratory Orders:
Shell Pipeline Co. LP, 71601
Preliminary Permit Applications:
KC Small Hydro LLC; Advanced Hydropower, Inc., 71601–71602
Proposed Restricted Service List:
Lock 12 Hydro Partners, LLC, 71602–71603
Lock 14 Hydro Partners, LLC, 71603

**Federal Financial Institutions Examination Council**
NOTICES
Meetings:
Appraisal Subcommittee, 71611

**Federal Highway Administration**
NOTICES
Meetings:
MAP–21 Comprehensive Truck Size and Weight Limits Study and Outreach Sessions, 71707–71708

**Federal Maritime Commission**
NOTICES
Ocean Transportation Intermediary License Revocations and Terminations, 71611–71612

**Federal Motor Carrier Safety Administration**
NOTICES
Meetings; Sunshine Act, 71708

**Federal Railroad Administration**
RULES
Passenger Train Emergency Systems II, 71786–71816
NOTICES
Applications for Approval of a Railroad Safety Program Plan, 71708–71709
Applications for Approval of Discontinuance or Modification of a Railroad Signal System, 71709–71710
Approval of Discontinuance or Modification of a Railroad Signal System, 71710
Petitions for Waivers of Compliance, 71710–71712

**Federal Reserve System**
RULES
Policy Statement on the Scenario Design Framework for Stress Testing, 71435–71448

PROPOSED RULES
Liquidity Coverage Ratio:
Liquidity Risk Measurement, Standards, and Monitoring, 71818–71868
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 71612
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 71612–71613

**Federal Trade Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71613–71614

**Fish and Wildlife Service**
NOTICES
Meetings:
North American Wetlands Conservation Council, 71637–71638

**Food and Drug Administration**
RULES
Food Additives:
Incorporation by Reference of the Food Chemicals Codex, 7th Edition, 71457–71467
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Adverse Event Program for Medical Products, 71620–71621
Designated New Animal Drugs for Minor Use and Minor Species, 71623–71624
Eye Tracking Study of Direct-to-Consumer Prescription Drug Advertisement Viewing, 71621–71623

**General Services Administration**
RULES
Federal Management Regulations:
Transportation Payment and Audit, 71528–71529
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
MyUSA, 71614–71615

**Geological Survey**
NOTICES
Meetings:
National Geospatial Advisory Committee, 71638

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Food and Drug Administration
*See* National Institutes of Health
NOTICES
Meetings:
Presidential Commission for the Study of Bioethical Issues, 71615

**Homeland Security Department**
*See* Coast Guard
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
General Meeting Registration and Evaluation, 71630–71631
Technical Resource for Incident Prevention User Registration, 71629–71630
Meetings:
Homeland Security Information Network Advisory Committee, 71631–71632
Opportunities for Cooperative Research and Development Agreements:
Testing of Reusable Electronic Conveyance Security Device Solutions, 71632–71633

**Housing and Urban Development Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Appalachia Economic Development Initiative and Semi-Annual Reporting, 71635
Delta Community Capital Initiative Application and Semi-Annual Reporting, 71634–71635
Federal Property Suitable as Facilities to Assist the Homeless, 71635–71637

**Indian Affairs Bureau**
NOTICES
Environmental Impact Statements; Availability, etc.:
Soboba Band of Luiseno Indians' Proposed Trust Acquisition and Casino Project, Riverside County, CA, 71639–71640

**Interior Department**
*See* Fish and Wildlife Service
*See* Geological Survey
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
RULES
Additional Medicare Tax, 71468–71475
Authority for Voluntary Withholding on Other Payments, 71476
Health Insurance Providers Fee, 71476–71493
PROPOSED RULES
Authority for Voluntary Withholding on Other Payments, 71542–71543
Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 71535–71542

**International Trade Administration**
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Circular Welded Carbon Steel Pipes and Tubes from Taiwan, 71563–71565
Steel Threaded Rod from India; Postponement, 71565
Trade Missions:
Secretarial Infrastructure Business Development Mission to Mexico, 71565

**International Trade Commission**
NOTICES
Investigations; Terminations, Modifications and Rulings, etc.:
Certain Opaque Polymers, 71643
Certain Wireless Consumer Electronics Devices and Components Thereof, 71643–71645

**Justice Department**
*See* Drug Enforcement Administration

*See* Justice Programs Office
**NOTICES**
Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence, 71645–71660

**Justice Programs Office**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Youth Gang Survey, 71665

**Labor Department**
*See* Employee Benefits Security Administration
*See* Mine Safety and Health Administration
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure, 71667–71668
Cranes and Derricks in Construction Standard, 71666–71667
Use of Public Space by Non-DOL Agencies in the Frances Perkins Building, 71665–71666
Worker Classification Survey; Correction, 71668

**Land Management Bureau**
**NOTICES**
Environmental Impact Statements; Availability, etc.:
Proposed Soda Mountain Solar Project, San Bernardino County, CA, 71640–71641
Realty Actions:
Direct Sale of Public Land in Graham County, AZ, 71641–71642

**Library of Congress**
*See* Copyright Office, Library of Congress
*See* Copyright Royalty Board

**Maritime Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71712–71713
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Supplementary Training Course Application, 71713

**Mine Safety and Health Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification Program Request for MSHA Individual Identification Number, 71671–71672

**National Archives and Records Administration**
**NOTICES**
Meetings:
Advisory Committee on the Records of Congress, 71672

**National Highway Traffic Safety Administration**
**PROPOSED RULES**
Insurance Cost Information, 71558–71560
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71713–71714
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reports, Forms, and Recordkeeping Requirements, 71714–71715
Highway Safety Program Guidelines; Amendments, 71715–71724

**National Institutes of Health**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Data Collection to Understand How NIH Programs Apply Methodologies to Improve Their Research Programs, 71624–71625
Government-Owned Inventions; Availability for Licensing, 71625–71627
Meetings:
National Cancer Institute, 71627–71628
National Institute of Allergy and Infectious Diseases, 71628–71629
National Institute of Biomedical Imaging and Bioengineering, 71627
National Institute on Alcohol Abuse and Alcoholism, 71628

**National Oceanic and Atmospheric Administration**
**RULES**
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
2013 Commercial Accountability Measure and Closure for South Atlantic Red Porgy, 71529–71530
2013 Commercial Accountability Measure and Closure for South Atlantic Vermilion Snapper, 71530–71531
**NOTICES**
Meetings:
New England Fishery Management Council, 71565–71566
Takes of Marine Mammals Incidental to Specified Activities:
St. George Reef Light Station Restoration and Maintenance at Northwest Seal Rock, Del Norte County, CA, 71576–71581
Wharf Recapitalization Project, Naval Station Mayport, FL, 71566–71575

**Navy Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71584

**Nuclear Regulatory Commission**
**PROPOSED RULES**
Material Control and Accounting Regulations and Proposed Guidance:
Fuel Cycle Facility Material Control and Accounting Plans and Completing Form 327; Meeting, 71532
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71673–71675
Electronic Operating Reactor Correspondence; Update, 71675
License Amendment Applications:
Vermont Yankee Nuclear Power Station, 71675
Reports; Availability, etc.:
Guidelines for Inservice Testing at Nuclear Power Plants, 71676

**Patent and Trademark Office**
**PROPOSED RULES**
Changes to Implement the Hague Agreement Concerning International Registration of Industrial Designs, 71870–71902

**Personnel Management Office**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Employees Health Benefits Open Season Express Interactive Voice Response System, etc., 71676–71677
Excepted Service, 71677–71684

**Presidential Documents**
ADMINISTRATIVE ORDERS
National Defense Authorization Act for Fiscal Year 2013; Delegation of Functions (Memorandum of October 28, 2013), 71983–71985

**Securities and Exchange Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71684–71686
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 71688–71689
Chicago Mercantile Exchange Inc., 71694–71695
Financial Industry Regulatory Authority, Inc., 71695–71700
Fixed Income Clearing Corporation, 71702–71704
NASDAQ OMX PHLX LLC, 71700–71702
National Securities Clearing Corp., 71686–71688
The NASDAQ Stock Market LLC, 71690–71693
Topaz Exchange, LLC, 71689–71690

**Small Business Administration**
NOTICES
Draft Strategic Plan for Fiscal Years 2014–2018, 71704

**State Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Student and Exchange Visitor Information System, 71704–71705

**Surface Mining Reclamation and Enforcement Office**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71642

**Surface Transportation Board**
RULES
Information Required in Notices and Petitions Containing Interchange Commitments, 71529
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Household Movers' Disclosure Requirements, 71725
Rail Depreciation Studies, 71724
Recordations, Water Carrier Tariffs, and Agricultural Contract Summaries, 71724–71725

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Motor Carrier Safety Administration
*See* Federal Railroad Administration
*See* Maritime Administration
*See* National Highway Traffic Safety Administration
*See* Surface Transportation Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Conveyance of Port Facility Property, 71705–71706
Meetings:
Advisory Committee for Aviation Consumer Protection, 71706

**Treasury Department**
*See* Comptroller of the Currency
*See* Internal Revenue Service

**Veterans Affairs Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Compliance Inspection Report, 71725–71726
Insurance Survey, 71726
Supplemental Disability Report, 71725
Privacy Act; Systems of Records, 71727–71729

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 71732–71784

**Part III**
Transportation Department, Federal Railroad Administration, 71786–71816

**Part IV**
Federal Deposit Insurance Corporation, 71818–71868
Federal Reserve System, 71818–71868
Treasury Department, Comptroller of the Currency, 71818–71868

**Part V**
Commerce Department, Patent and Trademark Office, 71870–71902

**Part VI**
Environmental Protection Agency, 71904–71981

**Part VII**
Presidential Documents, 71983–71985

---

**Reader Aids**

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

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

## CFR PARTS AFFECTED IN THIS ISSUE

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


**3 CFR**

**Administrative Orders:**

Memorandums:
memorandum of
October 28, 2013 .....71985

**10 CFR**

**Proposed Rules:**

40 .....71532
70 .....71532
72 .....71532
74 .....71532
150 .....71532

**12 CFR**

252 .....71435

**Proposed Rules:**

50 .....71818
249 .....71818
329 .....71818

**14 CFR**

**Proposed Rules:**

39 .....71532

**18 CFR**

40 .....71448

**21 CFR**

172 .....71457
173 .....71457
178 .....71457
180 .....71457

**26 CFR**

1 .....71467
31 (2 documents) .....71467, 71475
57 .....71476
602 .....71476

**Proposed Rules:**

1 .....71535
31 .....71542

**33 CFR**

100 .....71492
165 .....71495

**Proposed Rules:**

100 .....71543
165 .....71546

**34 CFR**

**Proposed Rules:**

300 .....71549

**37 CFR**

201 .....71497
381 .....71501
386 .....71501

**Proposed Rules:**

1 .....71870
3 .....71870
5 .....71870
11 .....71870

**40 CFR**

52 (3 documents) .....71502, 71504, 71507
60 .....71510
61 .....71510
63 .....71510
98 .....71904
180 .....71523

**Proposed Rules:**

52 (2 documents) .....71550, 71554
80 .....71732

**41 CFR**

102–118 .....71528

**42 CFR**

**Proposed Rules:**

412 .....71555

**47 CFR**

**Proposed Rules:**

73 .....71557

**49 CFR**

238 .....71786
239 .....71786
1121 .....71529
1150 .....71529
1180 .....71529

**Proposed Rules:**

582 .....71558

**50 CFR**

622 (2 documents) .....71529, 71530

# Rules and Regulations

Federal Register
Vol. 78, No. 230
Friday, November 29, 2013

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 252

**[Regulation YY; Docket No. OP–1452]**

**RIN 7100–AD–86**

## Policy Statement on the Scenario Design Framework for Stress Testing

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Final rule; policy statement.

**SUMMARY:** The Board is adopting a final policy statement on the approach to scenario design for stress testing that will be used in connection with the supervisory and company-run stress tests conducted under the Board's regulations pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and the Board's capital plan rule.

**DATES:** This rule will be effective on January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Tim Clark, Senior Associate Director, (202) 452–5264, Lisa Ryu, Deputy Associate Director, (202) 263–4833, David Palmer, Senior Supervisory Financial Analyst, (202) 452–2904, or Joseph Cox, Financial Analyst, (202) 452–3216, Division of Banking Supervision and Regulation; Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or Jeremy Kress, Attorney, (202) 872–7589, Legal Division; or Andreas Lehnert, Deputy Director, (202) 452–3325, or Rochelle Edge, Assistant Director, (202) 452–2339, Office of Financial Stability Policy and Research.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Background
II. Proposed Policy Statement
III. Summary of Comments
A. Design of Stress Test Scenarios
B. Additional Variables
C. Severely Adverse Scenario Development
D. Adverse Scenario Development
E. Market Shock and Additional Scenarios or Components of Scenarios
F. Transparency and Timing
G. Public Disclosure
IV. Administrative Law Matters
A. Use of Plain Language
B. Paperwork Reduction Act Analysis
C. Regulatory Flexibility Act Analysis

### I. Background

Stress testing is a tool that helps both bank supervisors and a financial company measure the sufficiency of capital available to support the financial company's operations throughout periods of stress.[1] The Board and the other federal banking agencies previously have highlighted the use of stress testing as a means to better understand the range of a financial company's potential risk exposures.[2]

In particular, building on its experience during the financial crisis, the Board initiated the annual Comprehensive Capital Analysis and Review (CCAR) in late 2010 to assess the capital adequacy and the internal capital planning processes of the same large, complex bank holding companies that participated in SCAP and to incorporate stress testing as part of the Board's regular supervisory program for assessing capital adequacy and capital planning practices at these large bank holding companies. The CCAR represents a substantial strengthening of previous approaches to assessing capital adequacy and promotes thorough and robust processes at large financial companies for measuring capital needs and for managing and allocating capital resources.

On November 22, 2011, the Board issued an amendment (capital plan rule) to its Regulation Y to require all U.S bank holding companies with total consolidated assets of $50 billion or more to submit annual capital plans to the Board. This procedure allows the Board to assess whether the bank holding companies have robust, forward-looking capital planning processes and have sufficient capital to continue operations throughout times of economic and financial stress.[3]

In the wake of the financial crisis, Congress enacted the Dodd-Frank Act, which requires the Board to implement enhanced prudential supervisory standards, including requirements for stress tests, for covered companies to mitigate the threat to financial stability posed by these institutions.[4] Section 165(i)(1) of the Dodd-Frank Act requires the Board to conduct an annual stress test of each bank holding company with total consolidated assets of $50 billion or more and each nonbank financial company that the Council has designated for supervision by the Board (covered company) to evaluate whether the covered company has sufficient capital, on a total consolidated basis, to absorb losses as a result of adverse economic conditions (supervisory stress tests).[5] The Act requires that the supervisory stress test provide for at least three different sets of conditions—

[1] A full assessment of a company's capital adequacy must take into account a range of risk factors, including those that are specific to a particular industry or company.

[2] *See, e.g., Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets,* 77 FR 29458 (May 17, 2012), available at *http://www.federalreserve.gov/bankinforeg/srletters/sr1207a1.pdf;* Supervision and Regulation Letter SR 10–6, *Interagency Policy Statement on Funding and Liquidity Risk Management* (March 17, 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006a1.pdf;* Supervision and Regulation Letter SR 10–1, *Interagency Advisory on Interest Rate Risk* (January 11, 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/SR1001.pdf;* Supervision and Regulation Letter SR 09–4, *Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies* (revised March 27, 2009), available at *http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm;* Supervision and Regulation Letter SR 07–1, *Interagency Guidance on Concentrations in Commercial Real Estate* (Jan. 4, 2007), available at *http://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm;* Supervision and Regulation Letter SR 12–7, *Supervisory Guidance on Stress Testing for Banking Organizations with More Than $10 Billion in Total Consolidated Assets* (May 14, 2012), available at *http://www.federalreserve.gov/bankinforeg/srletters/sr1207.htm;* Supervision and Regulation Letter SR 99–18, *Assessing Capital Adequacy in Relation to Risk at Large Banking Organizations and Others with Complex Risk Profiles* (July 1, 1999), available at *http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918.htm; Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework,* 73 FR 44620 (July 31, 2008); *The Supervisory Capital Assessment Program: SCAP Overview of Results* (May 7, 2009), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf;* and *Comprehensive Capital Analysis and Review: Objectives and Overview* (Mar. 18, 2011), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110318a1.pdf.*

[3] *See* Capital Plans, 76 FR 74631 (Dec. 1, 2011) (codified at 12 CFR 225.8).

[4] *See* section 165(i) of the Dodd-Frank Act; 12 U.S.C. 5365(i).

[5] *See* 12 U.S.C. 5365(i)(1).

baseline, adverse, and severely adverse conditions—under which the Board would conduct its evaluation. The Act also requires the Board to publish a summary of the supervisory stress test results.

In addition, section 165(i)(2) of the Dodd-Frank Act requires the Board to issue regulations that require covered companies to conduct stress tests semi-annually and require financial companies with total consolidated assets of more than $10 billion that are not covered companies and for which the Board is the primary federal financial regulatory agency to conduct stress tests on an annual basis (collectively, company-run stress tests).[6] The Board issued final rules implementing the stress test requirements of the Act on October 12, 2012 (stress test rules).[7]

The Board's stress test rules provide that the Board will notify covered companies, by no later than November 15 of each year of a set of conditions (each set, a scenario), it will use to conduct its annual supervisory stress tests.[8] The rules further establish that the Board will provide, also by no later than November 15, covered companies and other financial companies subject to the final rule the scenarios they must use to conduct their annual company-run stress tests.[9] Under the stress test rules, the Board may require certain companies to use additional components in the adverse or severely adverse scenario or additional scenarios.[10] For example, the Board has required large banking organizations with significant trading activities to include trading and counterparty components (the ''market shock,'' described in the following sections) in their adverse and severely adverse scenarios. The Board will provide any additional components or scenarios by no later than December 1 of each year.[11] The Board expects that the scenarios it will require the companies to use will be the same as those the Board will use to conduct its supervisory stress tests (together, stress test scenarios).

Selecting appropriate scenarios is an especially significant consideration for stress tests required under the capital plan rule, which ties the review of a bank holding company's performance under stress scenarios to its ability to make capital distributions. More severe scenarios, all other things being equal, generally translate into larger projected declines in a company's capital. Thus, a company would need more capital today to meet its minimum capital requirements in more stressful scenarios and have the ability to continue making capital distributions, such as common dividend payments. This translation is far from mechanical; it will depend on factors that are specific to a given company, such as underwriting standards and the financial company's business model, which would also greatly affect projected revenue, losses, and capital.

## II. Proposed Policy Statement

In order to enhance the transparency of the scenario design process, on November 23, 2012, the Board published for public comment a proposed policy statement (proposed policy statement) that would be used to develop scenarios for annual supervisory and company-run stress tests under the stress testing rules issued under the Dodd-Frank Act and the capital plan rule.[12] The proposed policy statement outlined the characteristics of the supervisory stress test scenarios and explained the considerations and procedures that underlie the formulation of these scenarios. The considerations and procedures described in the proposed policy statement would apply to the Board's stress testing framework, including to the stress tests required under 12 CFR part 252, subparts F, G, and H, as well as the Board's capital plan rule (12 CFR 225.8).

The proposed policy statement provided a broad description of the baseline, adverse, and severely adverse scenarios and described the types of variables that the Board would expect to include in the macroeconomic scenarios and in the market shock component of the stress test scenarios applicable to companies with significant trading activity. The proposed policy statement also described the Board's approach to developing the macroeconomic scenarios and market shocks, as well as the relationship between the macroeconomic scenario and the market shock components. The Board noted that it may determine that material modifications to the proposed policy statement are appropriate if the supervisory stress test framework expands materially to include additional components or other scenarios that are currently not captured.[13]

## III. Summary of Comments

The Board received seven comments on the proposed policy statement. Commenters included financial companies, trade organizations, and public interest groups. In general, commenters supported the proposed policy statement and commended the Board for enhancing the transparency of the scenario design framework. Commenters provided a number of suggestions for improving the proposed framework, including by incorporating additional risks into the supervisory scenarios, providing additional scenarios and variables that would capture salient risks to financial companies, making the scenarios more predictable, and further enhancing the transparency of the scenario design process and stress testing in general. In response to these comments, the Board has modified certain aspects of the proposed policy statement, including expanding the information included in the narrative to be published with the macroeconomic scenarios; adding an historical-based approach to the adverse scenario; and providing additional information about the process for designing the path of international variables. The Board generally has retained the overall principles underlying the policy statement and its overall organization.

### *A. Design of Stress Test Scenarios*

Commenters suggested a variety of ways for the Board to alter or improve the design of stress test scenarios, including by making the process more predictable, using a variety of stress testing approaches to more fully capture salient risks, tailoring the scenario for nonbank financial companies, and coordinating with the other federal banking regulators.

Some commenters advocated for making the scenarios more predictable by anchoring them more firmly in historical episodes or using a probabilistic approach with a specified tail percentile for severity. One commenter asserted that the predictability of the design framework was diminished by the proposed policy statement noting that scenarios would vary in relation to changes in the outlook for economic and financial conditions and changes to specific risks or vulnerabilities.

[6] 12 U.S.C. 5365(i)(2).

[7] 77 FR 62398 (October 12, 2012); 12 CFR part 252, subparts F–H.

[8] *See id.;* 12 CFR 252.134(b).

[9] *See id.;* 12 CFR 252.144(b), 154(b). The annual company-run stress tests use data as of September 30 of each calendar year.

[10] 12 CFR 252.144(b), 154(b).

[11] *Id.*

[12] 77 FR 70124.

[13] Before requiring a company to include additional components or other scenarios in its company-run stress tests, the Board would follow the notice procedures set forth in the stress test rules. *See* 12 CFR 252.144(b), 154(b).

The Board believes it is important that scenario development remain flexible in order to ensure that the stress tests have the ability to capture emerging risks or elevated systemic risk. Some commenters noted that it was important for supervisors to retain sufficient discretion in order to prevent the scenario from becoming stale or irrelevant. For these reasons, the final policy statement outlines the general range of scenarios that may be implemented, as well as their overall severity, but the Board retains the flexibility to incorporate developing risks and vary the scenario in response to the Board's views regarding the level of systemic and other risks.

One commenter advocated the use of a variety of approaches to scenario development, including using sensitivity analysis and recommended changing the correlations and dependencies between risk factors given that the relationships between risk factors observed in normal times may not apply during stressful conditions.

The final policy statement allows for a variety of approaches to scenario development and for flexibility in changing correlations and dependencies between risk factors. For example, the final policy statement allows for the adverse scenario to follow either a recession approach, a probabilistic approach, or an approach based on historical experiences, with the possibility of including additional risks that the Board believes should be understood and monitored. Further, the final policy statement allows the Board to augment the severely adverse scenario to reflect salient risks that would not be captured under the recession approach that is used to develop the severely adverse scenario. Augmenting the severely adverse scenario to include salient risks and the possibility of including additional risks in the adverse scenario allows for correlations and dependencies between risk factors to be further altered to capture specific stressful outcomes that are identified by economists, bank supervisors, and financial market experts as representing particularly relevant risks.

One commenter urged the Board to account in its scenario design framework for unique risks faced by nonbank financial companies supervised by the Board. The commenter asserted that the scenarios for nonbank financial companies should de-emphasize shocks arising from traditional banking activities, as such risks would be less salient for nonbank financial companies. The Board expects to take into account differences among bank holding companies and nonbank covered companies supervised by the Board when applying the stress testing requirements.[14] As the nonbank financial companies implement the stress testing requirements, the Board may tailor the application for those companies, including by updating its framework for developing supervisory scenarios. The Board will continue to consult with other supervisory authorities, including the Federal Insurance Office, as appropriate.

Finally, some commenters stressed the importance of coordination between the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) in developing a common scenario in order to prevent the stress testing process from becoming overly complex and burdensome. In addition, commenters suggested that different scenarios from each agency would make the public disclosure of company-run stress test results more difficult to interpret. As noted previously in the stress test rules and in the proposed policy statement, the Board plans to develop scenarios each year in close consultation with the primary federal financial regulatory agencies. The Board, FDIC, and OCC followed this approach both in 2012 and 2013. This coordinated approach allows a common set of scenarios to be used for the annual company-run stress tests across various banking entities within the same organizational structure. The Board plans to continue to develop the annual set of scenarios in consultation with the OCC and the FDIC to reduce the burden that could arise from having the agencies establish inconsistent scenarios.

*B. Additional Variables*

Several commenters supported adding additional variables to the supervisory scenarios. A few commenters noted that it would be helpful for the Board to provide companies with a broader suite of variables. In particular, one company noted that in order to run its stress tests under the supervisory scenarios, it had to forecast hundreds of additional variables. One commenter noted that requiring companies to project the paths of additional variables could create inconsistency between the scenarios that companies use in their stress tests, reducing the industry-wide comparability of the exercise.

Several commenters requested specific variables, including additional country-specific international variables. Commenters requested that the Board include variables on more countries and more scenario variables for each country, including information on unemployment rates, equity market indexes, and home values. One commenter provided tables of suggested variables that many companies use for their own internal processes. Finally, one commenter urged the Board to provide all the factors used in its own models in the supervisory stress test to improve macroprudential supervision and increase the consistency of scenario assumptions and the comparability of results across companies.

In defining the supervisory scenarios, the Board expects to provide the variables the Board considers to be the most important descriptors of the scenarios' economic and financial conditions. However, in response to comments, the Board will provide a narrative with the supervisory scenarios each year to aid companies in projecting other variables based on the variables provided in the scenarios. The narrative will include descriptions of the paths of many additional variables companies may need to project for their company-run stress tests. The Board may add additional variables to the scenarios in the future if the Board determines that the variables provide additional information about the conditions in the scenarios that cannot be inferred from the other variables in the supervisory scenarios. For example, this year the Board plans to provide two additional interest rate variables, the yield on 5-year Treasury bonds and the prime rate, that were specifically requested by one commenter. However, large and complex financial companies should be able to identify their key risks and relate them to the external environment by translating the supervisory scenario into additional variables.

Several commenters suggested that the variables from the market shock component of the adverse and severely adverse scenarios should be provided to all companies subject to stress tests. One industry commenter requested that the market shock to be released to all companies at the same time as the macroeconomic scenario so the companies can use variables from the market shock in their company-run stress tests.

[14] To date, the Financial Stability Oversight Council has designated three nonbank financial companies for supervision by the Board: General Electric Capital Corporation, American International Group, Inc., and Prudential Financial Inc. These companies will be subject to the Board's stress testing rules beginning with the stress cycle that commences in the calendar year after the year in which the company first becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

In order to enhance the transparency of the supervisory and company-run stress tests, the Board expects to publish the market shock component annually.[15] However, only companies with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y–14) (trading companies) are subject to the market shock component.[16] Companies that are not subject to the market shock should not incorporate the market shock component into their stress tests or complete the Securities AFS Market Shock tab on the FR Y–14A Summary Schedule. Moreover, unlike the scenarios, the market shock is not a time series but rather is assumed to be an instantaneous event. Companies should not assume that the risk factor moves in the market shock are appropriate for inclusion in their stress tests as a complement to the macroeconomic scenarios.

*C. Severely Adverse Scenario Development*

Several commenters provided feedback on the proposed approach for developing the severely adverse scenario. Some commenters suggested alternative frameworks that would limit the variability in the severity of the scenario. An industry participant suggested that the Board should avoid volatility in scenario severity based on the economic conditions at the starting point of the exercise, as variation in the scenario severity would cause stress losses and capital requirements to vary considerably. Another commenter supported the historical approach to designing the severely adverse scenario, asserting that it would constrain the scenario to a plausible range and make the scenario more predictable.

One commenter expressed a preference for the probabilistic approach and advocated for a consistent probabilistic severity (i.e., the same tail percentile) with idiosyncratic differences in risk factor movements to reflect existing and emerging concerns. The commenter acknowledged the drawbacks that the Board identified with the probabilistic approach but suggested that these problems could be overcome with rigor in calibration and supervisory discretion in picking variables and paths of variables. Finally, the commenter suggested that the supervisory judgment required to use the probabilistic approach will ensure a proactive and prudential supervisory scenario design process.

As noted in the proposed policy statement, the Board intends to offset natural procyclical tendencies in its scenario design framework by using an approach that ensures the scenarios reach a minimum severity level. The Board believes that setting a floor for the severity of the scenario is appropriate in light of cyclical systemic risks that build up at financial intermediaries during robust expansions that may be obscured by the strength of the overall environment. The Board also believes that varying the scenario severity in response to systemic risks is aligned with the goals of scenario design and stress testing. As such, the Board believes varying the severity of the severely adverse scenario based on current macroeconomic conditions—in the same manner as described in the proposed policy statement—better meets the goals of scenario design and stress testing than alternative methods of specifying the severity of the supervisory scenarios.

*D. Adverse Scenario Development*

One commenter suggested that the process for designing the adverse scenario should be constrained, perhaps by historical experience, so that the scenario does not change drastically from year to year. The commenter noted that an exception could be granted for cases where the Board has identified material emerging risks not captured in adverse historical precedents. The commenter suggested that the Board select from a menu of historical macroeconomic events or derive the paths of adverse scenario variables from a combination of the historical events, which would allow the adverse scenario variables to fluctuate within a more predictable range.

The Board does not believe that predictability of the scenarios from year to year should be the overriding factor determining the specification of the adverse scenario. Other factors are also important in determining the specification of the adverse scenario, including, but not limited to, improved understanding of relevant risks to the banking industry (that may not captured in the severely adverse scenario), nonlinearities in the effect of macroeconomic conditions on the companies' financial condition, and risks identified by the companies in their living wills or in the company-developed scenarios for the CCAR or mid-cycle company-run stress tests.

The Board believes that adverse scenarios based on historical experiences represent important stresses to financial companies and has added this approach to the list of possible approaches used to formulate the adverse scenario. However, the Board believes that there are notable benefits from formulating the adverse scenario following other approaches. Varying the approach the Board uses for the adverse scenario each year—by incorporating specific risks or by using the probabilistic approach, for instance—permits flexibility so that the results of the scenario provide the most value to supervisors, in light of current economic conditions. Consequently, the adverse scenario design framework in the final policy statement contains a range of options and is not limited only to historical episodes.

*E. Market Shock and Additional Scenarios or Components of Scenarios*

The Board did not receive comments on its proposed framework for designing the market shock scenario component. However, several commenters advocated for the inclusion of additional scenarios and components of scenarios in the stress tests. One commenter urged the Board to include operational risk because, in the commenter's view, operational risk failures can allow for the accretion of credit and market risk. Another commenter focused on the need for a supervisory scenario that included liquidity risk, even in a capital stress test. The commenter noted that short-term funding risk was a major contributor to the financial crisis due to the interrelationship between capital and liquidity. The commenter advocated for supervisory scenarios that take into account the potential for asset shocks that reduce capital to also cause a company to lose access to certain funding markets. Finally, one commenter suggested that the Board incorporate all possible risks in a single scenario or combine separate stress testing exercises appropriately to create a comprehensive and coherent stress test.

While operational risk and funding risk are material risks to some financial companies, no single stress test can incorporate all risks that affect a financial company. Companies should supplement stress tests conducted pursuant to the Dodd-Frank Act and capital plan rule with other stress tests and other risk measurement tools. For

[15] On March 7, 2013 the Board published the market shock components of the supervisory adverse and severely adverse scenarios that were used for the stress test cycle commencing on November 15, 2012. The severely adverse market shock is available online at: *http://www.federalreserve.gov/bankinforeg/accessible-2013-ccar-severely-adverse-market-shocks.htm.*

[16] Consistent with the instructions to the FR Y–14A, bank holding companies with greater than $500 billion in total consolidated assets that are subject to the amended market risk rule are considered to have significant trading activity.

example, as part of its supervisory process, the Board evaluates liquidity risk, including through stress testing, and the Board has proposed a rule that would require large bank holding companies and nonbank financial companies supervised by the Board to conduct liquidity stress tests.[17] Companies should conduct additional stress testing, as needed, to ensure that all risks and vulnerabilities, including funding and operational risk, are addressed—as described in the stress testing guidance issued by the agencies in May 2012.[18] If the Board requires companies to apply additional scenarios or components of scenarios on a regular basis—including for operational risk or the relationship between liquidity and capital risk—then the Board may update the final policy statement to include the process for designing those scenarios or components of scenarios.

*F. Transparency and Timing*

The Board received several comments on enhancing the transparency of the scenario design process, improving communication about the scenarios, and on the timing of when the scenarios are provided to the companies. Several commenters requested additional information about how the Board develops the scenarios or specific aspects of the scenarios. For instance, some commenters requested additional clarification on the process and assumptions for developing the international variables in the macroeconomic scenarios. In response to these comments, the final policy statement contains additional information on how the Board develops the scenarios. Section 4.2.3 of the final policy statement includes a description of the process and assumptions for developing the paths of international variables in the supervisory scenarios.

Some commenters requested that the Board include additional narrative information in its scenario release. One commenter requested the Board provide more description around the adverse and severely adverse scenarios, especially in cases where the scenarios do not derive from observable historical events, to aid companies in developing a deeper understanding of the economic situation that the data describes and the relationships between and among variables. The commenter suggested that without a fuller narrative it is difficult for companies to project additional variables in a manner that is consistent with the scenario, leading to inconsistent assumptions and variables across companies. More narrative information on the international variables was specifically requested, including information on whether the international scenarios are intended to reflect global conditions or whether they are designed to reflect idiosyncratic stresses at the country level.

Each year, to accompany the release of its supervisory scenarios, the Board has published a brief narrative summary of the macroeconomic scenarios. This narrative describes the supervisory scenarios and explains how they have changed relative to the previous year. In response to comments, the Board will also provide in the narrative a description of the economic situation underlying the scenario, including for the international environment in the scenarios.

In addition, to assist companies in projecting the paths of additional variables in a manner consistent with the scenario, the narrative accompanying the supervisory scenarios will also provide descriptions of the general path of some additional variables. These descriptions will be general—that is, they will describe developments for broad classes of variables rather than for specific variables—and will specify the intensity and direction of variable changes but not numeric magnitudes. These descriptions should provide guidance that will be useful to companies in specifying the paths of the additional variables for their company-run stress tests. In practice, it will not be possible for the narrative to include descriptions on all of the additional variables that companies may need to for their company-run stress tests.

One commenter requested that the Board communicate, in advance of the scenario release, any additional risks or vulnerabilities that would cause the scenario to vary due to changes in the outlook for economic and financial conditions. The Board expects that if a scenario varies in response to additional risks or vulnerabilities identified by the Board, then those risks and vulnerabilities would be communicated through the narrative that accompanies the supervisory scenarios.

Several commenters addressed the timeline for supervisory scenario development. A few commenters requested that the Board provide the supervisory scenarios to the companies earlier in order to provide adequate time for companies to evaluate the scenarios, develop additional required variables, and initiate the stress testing and capital planning processes. One commenter noted that providing the supervisory scenarios two weeks before November 15 would extend the time to companies have to conduct stress tests by 25 to 30 percent. Another commenter felt the current timetable is extremely aggressive and precludes companies from performing more comprehensive due diligence. One commenter acknowledged the concern that a scenario may become dated if it is released too early, but the commenter asserted that this concern is mitigated because only five quarters of the planning horizon will elapse before there is another annual stress test and capital planning exercise.

The Board recognizes the importance of providing covered companies adequate time to implement the company-run stress tests. The Board intends to release the scenarios as soon as it is possible to incorporate the relevant data on economic and financial conditions as of the end of the third quarter, but no later than November 15 of each year.

One commenter requested that the market shock and the macroeconomic scenarios be released concurrently. The commenter asserted that delays in processing the effect of the scenarios on capital markets positions affects all other processes downstream in the stress tests, including calculation of the company's capital position.

Because the market shock component is an instantaneous shock layered onto the stress test conducted under the macroeconomic scenario, it should not affect most other aspects of a company's stress test. However, in recognition of companies' constraints in conducting the company-run stress tests, the Board will seek to release the market shock before the deadline of December 1 of each year.

The Board has sought to improve the transparency around its stress testing practices, for example by releasing the stress scenarios with an accompanying narrative in advance of the stress test, publicly disclosing a detailed description of the framework and methodology employed in its supervisory stress test, and publishing for comment this policy statement on its framework for scenario design. In the future, the Board will continue to look for opportunities to provide additional transparency around its stress testing processes, while balancing the need to not reduce the incentives for companies to develop better internal stress test models that factor in their idiosyncratic risks and to consider the results of such

[17] *See* Notice of Proposed Rulemaking on Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, (January 5, 2012) (77 FR 594).

[18] *See* Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets, (May 17, 2012) (codified at 77 FR 29458).

models in their capital planning process.

*G. Public Disclosure*

One commenter requested a broader disclosure of the methods and data that are used in stress tests to enhance the public's understanding of the process and results. The commenter recommended disclosure of the specification, statistical fit, and out-of-sample forecasting properties of the risk models used in stress testing. As noted previously, the Board has sought to improve the transparency of its supervisory stress testing methodologies and practices, and has required companies subject to Dodd-Frank Act stress tests to publicly disclose some information about their company-run stress tests. The Board expects to revisit the scope of stress testing disclosure from time to time.

Another commenter suggested that public disclosure of the results of stress tests conducted by nonbank financial companies may not provide the marketplace with useful information concerning a company's overall risk profile or response to stressed conditions. The Board notes that section 165(i) of the Dodd-Frank Act requires the publication of a summary of the results of supervisory and company-run stress tests of each company, including nonbank financial companies. Moreover, the Board believes that public disclosure is a key component of stress testing that helps to provide valuable information to market participants, enhance transparency, and promote market discipline.

As noted above, the final policy statement will be effective on January 1, 2014. The scenarios for the stress test cycle that commenced on October 1, 2013, which the Board recently published, were designed in a manner generally consistent with the final policy statement. The final policy statement will be effective for supervisory scenarios that govern the resubmission of any stress tests for the cycle that commenced on October 1, 2013, as the Board may require.

## IV. Administrative Law Matters

*A. Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on whether the proposed policy statement was written plainly and clearly, or whether there were ways the Board could make the rule easier to understand. The Board received no comment on these matters and believes that the final policy statement is written plainly and clearly.

*B. Paperwork Reduction Act Analysis*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the policy statement to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in this policy statement.

*C. Regulatory Flexibility Act Analysis*

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''RFA''), the Board is publishing a final regulatory flexibility analysis for this policy statement. Based on its analysis and for the reasons stated below, the Board believes that the policy statement will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a regulatory flexibility analysis.

The Board is adopting a policy statement on the approach to scenario design for stress testing that will be used in connection with the supervisory and company-run stress tests conducted under the Board's Regulation YY (12 CFR part 252, subparts F, G, and H) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and the Board's capital plan rule (12 CFR 225.8). To enhance the transparency of the scenario design process, the policy statement outlines the characteristics of the supervisory stress test scenarios and explains the considerations and procedures that underlie the formulation of these scenarios.

Under regulations issued by the Small Business Administration (''SBA''), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $35 million or less to $500 million or less.[19] As discussed in the Supplementary Information, the policy statement generally would affect the scenario design framework used in regulations that apply to bank holding companies with $10 billion or more in total consolidated assets and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. Companies that are affected by the policy statement therefore substantially exceed the $500 million total asset threshold at which a company is considered a ''small entity'' under SBA regulations.

The policy statement would affect a nonbank financial company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[20] It is therefore unlikely that a financial firm that is at or below the $500 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such companies, or the nature, scope, size, scale, concentration, interconnectedness, or mix of it activities, is not likely to pose a threat to the financial stability of the United States.

Because the final policy statement is not likely to apply to any company with assets of $500 million or less, it is not expected to affect any small entity for purposes of the RFA. The Board does not believe that the policy statement duplicates, overlaps, or conflicts with any other Federal rules. The policy statement is unlikely to impose any new recordkeeping, reporting, or other compliance requirements or otherwise affect a small banking entity. In light of the foregoing, the Board does not believe that the policy statement will have a significant economic impact on a substantial number of small entities.

**List of Subjects in 12 CFR Part 252**

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Nonbank financial companies supervised by the Board, Reporting and recordkeeping requirements, Securities, Stress testing.

**Authority and Issuance**

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

## PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 continues to read as follows:

**Authority:** 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

[19] 13 CFR 121.201.

[20] *See* 76 FR 4555 (January 26, 2011).

■ 2. Appendix A to part 252 is added to read as follows:

## Appendix A to Part 252—Policy Statement on the Scenario Design Framework for Stress Testing

### 1. Background

a. The Board has imposed stress testing requirements through its regulations (stress test rules) implementing section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and through its capital plan rule (12 CFR 225.8). Under the stress test rules issued under section 165(i)(1) of the Act, the Board conducts an annual stress test (supervisory stress tests), on a consolidated basis, of each bank holding company with total consolidated assets of $50 billion or more and each nonbank financial company that the Financial Stability Oversight Council has designated for supervision by the Board (together, covered companies).[21] In addition, under the stress test rules issued under section 165(i)(2) of the Act, covered companies must conduct stress tests semi-annually and other financial companies with total consolidated assets of more than $10 billion and for which the Board is the primary regulatory agency must conduct stress tests on an annual basis (together company-run stress tests).[22] The Board will provide for at least three different sets of conditions (each set, a scenario), including baseline, adverse, and severely adverse scenarios for both supervisory and company-run stress tests (macroeconomic scenarios).[23]

b. The stress test rules provide that the Board will notify covered companies by no later than November 15 of each year of the scenarios it will use to conduct its annual supervisory stress tests and provide, also by no later than November 15, covered companies and other financial companies subject to the final rules the set of scenarios they must use to conduct their annual company-run stress tests.[24] Under the stress test rules, the Board may require certain companies to use additional components in the adverse or severely adverse scenario or additional scenarios.[25] For example, the Board expects to require large banking organizations with significant trading activities to include a trading and counterparty component (market shock, described in the following sections) in their adverse and severely adverse scenarios. The Board will provide any additional components or scenario by no later than December 1 of each year.[26] The Board expects that the scenarios it will require the companies to use will be the same as those the Board will use to conduct its supervisory stress tests (together, stress test scenarios).

c. In addition, § 225.8 of the Board's Regulation Y (capital plan rule) requires all U.S. bank holding companies with total consolidated assets of $50 billion or more to submit annual capital plans, including stress test results, to the Board to allow the Board to assess whether they have robust, forward-looking capital planning processes and have sufficient capital to continue operations throughout times of economic and financial stress.[27]

d. Stress tests required under the stress test rules and under the capital plan rule require the Board and financial companies to calculate pro-forma capital levels—rather than ''current'' or actual levels—over a specified planning horizon under baseline and stressful scenarios. This approach integrates key lessons of the 2007–2009 financial crisis into the Board's supervisory framework. During the financial crisis, investor and counterparty confidence in the capitalization of financial companies eroded rapidly in the face of changes in the current and expected economic and financial conditions, and this loss in market confidence imperiled companies' ability to access funding, continue operations, serve as a credit intermediary, and meet obligations to creditors and counterparties. Importantly, such a loss in confidence occurred even when a financial institution's capital ratios were in excess of regulatory minimums. This is because the institution's capital ratios were perceived as lagging indicators of its financial condition, particularly when conditions were changing.

e. The stress tests required under the stress test rules and capital plan rule are a valuable supervisory tool that provides a forward-looking assessment of large financial companies' capital adequacy under hypothetical economic and financial market conditions. Currently, these stress tests primarily focus on credit risk and market risk—that is, risk of mark-to-market losses associated with companies' trading and counterparty positions—and not on other types of risk, such as liquidity risk. Pressures stemming from these sources are considered in separate supervisory exercises. No single supervisory tool, including the stress tests, can provide an assessment of a company's ability to withstand every potential source of risk.

f. Selecting appropriate scenarios is an especially significant consideration for stress tests required under the capital plan rule, which ties the review of a bank holding company's performance under stress scenarios to its ability to make capital distributions. More severe scenarios, all other things being equal, generally translate into larger projected declines in banks' capital. Thus, a company would need more capital today to meet its minimum capital requirements in more stressful scenarios and have the ability to continue making capital distributions, such as common dividend payments. This translation is far from mechanical, however; it will depend on factors that are specific to a given company, such as underwriting standards and the company's business model, which would also greatly affect projected revenue, losses, and capital.

### 2. Overview and Scope

a. This policy statement provides more detail on the characteristics of the stress test scenarios and explains the considerations and procedures that underlie the approach for formulating these scenarios. The considerations and procedures described in this policy statement apply to the Board's stress testing framework, including to the stress tests required under 12 CFR part 252, subparts F, G, and H, as well as the Board's capital plan rule (12 CFR 225.8).[28]

b. Although the Board does not envision that the broad approach used to develop scenarios will change from year to year, the stress test scenarios will reflect changes in the outlook for economic and financial conditions and changes to specific risks or vulnerabilities that the Board, in consultation with the other federal banking agencies, determines should be considered in the annual stress tests. The stress test scenarios should not be regarded as forecasts; rather, they are hypothetical paths of economic variables that will be used to assess the strength and resilience of the companies' capital in various economic and financial environments.

c. The remainder of this policy statement is organized as follows. Section 3 provides a broad description of the baseline, adverse, and severely adverse scenarios and describes the types of variables that the Board expects to include in the macroeconomic scenarios and the market shock component of the stress test scenarios applicable to companies with significant trading activity. Section 4 describes the Board's approach for developing the macroeconomic scenarios, and section 5 describes the approach for the market shocks. Section 6 describes the relationship between the macroeconomic scenario and the market shock components. Section 7 provides a timeline for the formulation and publication of the

[21] 12 U.S.C. 5365(i)(1); 12 CFR part 252, subpart F.

[22] 12 U.S.C. 5365(i)(2); 12 CFR part 252, subparts G and H.

[23] The stress test rules define scenarios as ''those sets of conditions that affect the U.S. economy or the financial condition of a [company] that the Board annually determines are appropriate for use in stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.'' The stress test rules define baseline scenario as a ''set of conditions that affect the U.S. economy or the financial condition of a company and that reflect the consensus views of the economic and financial outlook.'' The stress test rules define adverse scenario a ''set of conditions that affect the U.S. economy or the financial condition of a company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.'' The stress test rules define severely adverse scenario as a ''set of conditions that affect the U.S. economy or the financial condition of a company and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.'' *See* 12 CFR 252.132(a), (d), (m), and (n); 12 CFR 252.142(a), (d), (o), and (p); 12 CFR 252.152(a), (e), (o), and (p).

[24] 12 CFR 252.144(b), 12 CFR 252.154(b). The annual company-run stress tests use data as of September 30 of each calendar year.

[25] 12 CFR 252.144(b), 154(b).

[26] *Id.*

[27] *See* Capital plans, 76 FR 74631 (Dec. 1, 2011) (codified at 12 CFR 225.8).

[28] The Board may determine that modifications to the approach are appropriate, for instance, to address a broader range of risks, such as, operational risk.

macroeconomic assumptions and market shocks.

**3. Content of the Stress Test Scenarios**

a. The Board will publish a minimum of three different scenarios, including baseline, adverse, and severely adverse conditions, for use in stress tests required in the stress test rules.[29] In general, the Board anticipates that it will not issue additional scenarios. Specific circumstances or vulnerabilities that in any given year the Board determines require particular vigilance to ensure the resilience of the banking sector will be captured in either the adverse or severely adverse scenarios. A greater number of scenarios could be needed in some years—for example, because the Board identifies a large number of unrelated and uncorrelated but nonetheless significant risks.

b. While the Board generally expects to use the same scenarios for all companies subject to the final rule, it may require a subset of companies— depending on a company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy—to include additional scenario components or additional scenarios that are designed to capture different effects of adverse events on revenue, losses, and capital. One example of such components is the market shock that applies only to companies with significant trading activity. Additional components or scenarios may also include other stress factors that may not necessarily be directly correlated to macroeconomic or financial assumptions but nevertheless can materially affect companies' risks, such as the unexpected default of a major counterparty.

c. Early in each stress testing cycle, the Board plans to publish the macroeconomic scenarios along with a brief narrative summary that provides a description of the economic situation underlying the scenario and explains how the scenarios have changed relative to the previous year. In addition, to assist companies in projecting the paths of additional variables in a manner consistent with the scenario, the narrative will also provide descriptions of the general path of some additional variables. These descriptions will be general—that is, they will describe developments for broad classes of variables rather than for specific variables—and will specify the intensity and direction of variable changes but not numeric magnitudes. These descriptions should provide guidance that will be useful to companies in specifying the paths of the additional variables for their company-run stress tests. Note that in practice it will not be possible for the narrative to include descriptions on all of the additional variables that companies may need to for their company-run stress tests. In cases where scenarios are designed to reflect particular risks and vulnerabilities, the narrative will also explain the underlying motivation for these features of the scenario. The Board also plans to release a broad description of the market shock components.

[29] 12 CFR 252.134(b), 12 CFR 252.144(b), 12 CFR 252.154(b).

*3.1 Macroeconomic Scenarios*

a. The macroeconomic scenarios will consist of the future paths of a set of economic and financial variables.[30] The economic and financial variables included in the scenarios will likely comprise those included in the ''2014 Supervisory Scenarios for Annual Stress Tests Required under the Dodd-Frank Act Stress Testing Rules and the Capital Plan Rule'' (2013 supervisory scenarios). The domestic U.S. variables provided for in the 2013 supervisory scenarios included:

i. Six measures of economic activity and prices: real and nominal gross domestic product (GDP) growth, the unemployment rate of the civilian non-institutional population aged 16 and over, real and nominal disposable personal income growth, and the Consumer Price Index (CPI) inflation rate;

ii. Four measures of developments in equity and property markets: The Core Logic National House Price Index, the National Council for Real Estate Investment Fiduciaries Commercial Real Estate Price Index, the Dow Jones Total Stock Market Index, and the Chicago Board Options Exchange Market Volatility Index; and

iii. Six measures of interest rates: the rate on the three-month Treasury bill, the yield on the 5-year Treasury bond, the yield on the 10-year Treasury bond, the yield on a 10-year BBB corporate security, the prime rate, and the interest rate associated with a conforming, conventional, fixed-rate, 30-year mortgage.

b. The international variables provided for in the 2014 supervisory scenarios included, for the euro area, the United Kingdom, developing Asia, and Japan:

i. Percent change in real GDP;

ii. Percent change in the Consumer Price Index or local equivalent; and

iii. The U.S./foreign currency exchange rate.[31]

c. The economic variables included in the scenarios influence key items affecting financial companies' net income, including pre-provision net revenue and credit losses on loans and securities. Moreover, these variables exhibit fairly typical trends in adverse economic climates that can have unfavorable implications for companies' net income and, thus, capital positions.

d. The economic variables included in the scenario may change over time. For example, the Board may add variables to a scenario if the international footprint of companies that are subject to the stress testing rules changed notably over time such that the variables already included in the scenario no longer sufficiently capture the material risks of these companies. Alternatively, historical relationships between macroeconomic variables could change over time such that one variable (*e.g.,* disposable personal income growth) that previously provided a good proxy for another (*e.g.,* light vehicle sales) in modeling companies' pre-provision net revenue or credit losses ceases to do so, resulting in the need to create a separate path, or alternative proxy, for the other variable. However, recognizing the amount of work required for companies to incorporate the scenario variables into their stress testing models, the Board expects to eliminate variables from the scenarios only in rare instances.

e. The Board expects that the company may not use all of the variables provided in the scenario, if those variables are not appropriate to the company's line of business, or may add additional variables, as appropriate. The Board expects the companies will ensure that the paths of such additional variables are consistent with the scenarios the Board provided. For example, the companies may use, as part of their internal stress test models, local-level variables, such as state-level unemployment rates or city-level house prices. While the Board does not plan to include local-level macro variables in the stress test scenarios it provides, it expects the companies to evaluate the paths of local-level macro variables as needed for their internal models, and ensure internal consistency between these variables and their aggregate, macroeconomic counterparts. The Board will provide the macroeconomic scenario component of the stress test scenarios for a period that spans a minimum of 13 quarters. The scenario horizon reflects the supervisory stress test approach that the Board plans to use. Under the stress test rules, the Board will assess the effect of different scenarios on the consolidated capital of each company over a forward-looking planning horizon of at least nine quarters.

*3.2 Market Shock Component*

a. The market shock component of the adverse and severely adverse scenarios will only apply to companies with significant trading activity and their subsidiaries.[32] The component consists of large moves in market prices and rates that would be expected to generate losses. Market shocks differ from macroeconomic scenarios in a number of ways, both in their design and application. For instance, market shocks that might typically be observed over an extended period (*e.g.,* 6 months) are assumed to be an instantaneous event which immediately affects the market value of the companies' trading assets and liabilities. In addition, under the stress test rules, the as-of date for market shocks will differ from the quarter-end, and the Board will provide the as-of date for market shocks no later than December 1 of each year. Finally, as

[30] The future path of a variable refers to its specification over a given time period. For example, the path of unemployment can be described in percentage terms on a quarterly basis over the stress testing time horizon.

[31] The Board may increase the range of countries or regions included in future scenarios, as appropriate.

[32] Currently, companies with significant trading activity include the six bank holding companies that are subject to the market risk rule and have total consolidated assets greater than $500 billion, as reported on their FR Y–9C. The Board may also subject a state member bank subsidiary of any such bank holding company to the market shock component. The set of companies subject to the market shock component could change over time as the size, scope, and complexity of financial company's trading activities evolve.

described in section 4, the market shock includes a much larger set of risk factors than the set of economic and financial variables included in macroeconomic scenarios. Broadly, these risk factors include shocks to financial market variables that affect asset prices, such as a credit spread or the yield on a bond, and, in some cases, the value of the position itself (*e.g.,* the market value of private equity positions).

b. The Board envisions that the market shocks will include shocks to a broad range of risk factors that are similar in granularity to those risk factors trading companies use internally to produce profit and loss estimates, under stressful market scenarios, for all asset classes that are considered trading assets, including equities, credit, interest rates, foreign exchange rates, and commodities. Examples of risk factors include, but are not limited to:

i. Equity indices of all developed markets, and of developing and emerging market nations to which companies with significant trading activity may have exposure, along with term structures of implied volatilities;

ii. Cross-currency FX rates of all major and many minor currencies, along term structures of implied volatilities;

iii. Term structures of government rates (*e.g.,* U.S. Treasuries), interbank rates (*e.g.,* swap rates) and other key rates (*e.g.,* commercial paper) for all developed markets and for developing and emerging market nations to which companies may have exposure;

iv. Term structures of implied volatilities that are key inputs to the pricing of interest rate derivatives;

v. Term structures of futures prices for energy products including crude oil (differentiated by country of origin), natural gas, and power;

vi. Term structures of futures prices for metals and agricultural commodities;

vii. ''Value-drivers'' (credit spreads or instrument prices themselves) for credit-sensitive product segments including: corporate bonds, credit default swaps, and collateralized debt obligations by risk; non-agency residential mortgage-backed securities and commercial mortgage-backed securities by risk and vintage; sovereign debt; and, municipal bonds; and

viii. Shocks to the values of private equity positions.

**4. Approach for Formulating the Macroeconomic Assumptions for Scenarios**

a. This section describes the Board's approach for formulating macroeconomic assumptions for each scenario. The methodologies for formulating this part of each scenario differ by scenario, so these methodologies for the baseline, severely adverse, and the adverse scenarios are described separately in each of the following subsections.

b. In general, the baseline scenario will reflect the most recently available consensus views of the macroeconomic outlook expressed by professional forecasters, government agencies, and other public-sector organizations as of the beginning of the annual stress-test cycle. The severely adverse scenario will consist of a set of economic and financial conditions that reflect the conditions of post-war U.S. recessions. The adverse scenario will consist of a set of economic and financial conditions that are more adverse than those associated with the baseline scenario but less severe than those associated with the severely adverse scenario.

c. Each of these scenarios is described further in sections below as follows: baseline (subsection 4.1), severely adverse (subsection 4.2), and adverse (subsection 4.3)

*4.1 Approach for Formulating Macroeconomic Assumptions in the Baseline Scenario*

a. The stress test rules define the baseline scenario as a set of conditions that affect the U.S. economy or the financial condition of a banking organization, and that reflect the consensus views of the economic and financial outlook. Projections under a baseline scenario are used to evaluate how companies would perform in more likely economic and financial conditions. The baseline serves also as a point of comparison to the severely adverse and adverse scenarios, giving some sense of how much of the company's capital decline could be ascribed to the scenario as opposed to the company's capital adequacy under expected conditions.

b. The baseline scenario will be developed around a macroeconomic projection that captures the prevailing views of private-sector forecasters (*e.g.* Blue Chip Consensus Forecasts and the Survey of Professional Forecasters), government agencies, and other public-sector organizations (*e.g.,* the International Monetary Fund and the Organization for Economic Co-operation and Development) near the beginning of the annual stress-test cycle. The baseline scenario is designed to represent a consensus expectation of certain economic variables over the time period of the tests and it is not the Board's internal forecast for those economic variables. For example, the baseline path of short-term interest rates is constructed from consensus forecasts and may differ from that implied by the FOMC's *Summary of Economic Projections.*

c. For some scenario variables—such as U.S. real GDP growth, the unemployment rate, and the consumer price index—there will be a large number of different forecasts available to project the paths of these variables in the baseline scenario. For others, a more limited number of forecasts will be available. If available forecasts diverge notably, the baseline scenario will reflect an assessment of the forecast that is deemed to be most plausible. In setting the paths of variables in the baseline scenario, particular care will be taken to ensure that, together, the paths present a coherent and plausible outlook for the U.S. and global economy, given the economic climate in which they are formulated.

*4.2 Approach for Formulating the Macroeconomic Assumptions in the Severely Adverse Scenario*

The stress test rules define a severely adverse scenario as a set of conditions that affect the U.S. economy or the financial condition of a financial company and that overall are more severe than those associated with the adverse scenario. The financial company will be required to publicly disclose a summary of the results of its stress test under the severely adverse scenario, and the Board intends to publicly disclose the results of its analysis of the financial company under the adverse scenario and the severely adverse scenario.

4.2.1 General Approach: The Recession Approach

a. The Board intends to use a recession approach to develop the severely adverse scenario. In the recession approach, the Board will specify the future paths of variables to reflect conditions that characterize post-war U.S. recessions, generating either a typical or specific recreation of a post-war U.S. recession. The Board chose this approach because it has observed that the conditions that typically occur in recessions—such as increasing unemployment, declining asset prices, and contracting loan demand—can put significant stress on companies' balance sheets. This stress can occur through a variety of channels, including higher loss provisions due to increased delinquencies and defaults; losses on trading positions through sharp moves in market prices; and lower bank income through reduced loan originations. For these reasons, the Board believes that the paths of economic and financial variables in the severely adverse scenario should, at a minimum, resemble the paths of those variables observed during a recession.

b. This approach requires consideration of the type of recession to feature. All post-war U.S. recessions have not been identical: some recessions have been associated with very elevated interest rates, some have been associated with sizable asset price declines, and some have been relatively more global. The most common features of recessions, however, are increases in the unemployment rate and contractions in aggregate incomes and economic activity. For this and the following reasons, the Board intends to use the unemployment rate as the primary basis for specifying the severely adverse scenario. First, the unemployment rate is likely the most representative single summary indicator of adverse economic conditions. Second, in comparison to GDP, labor market data have traditionally featured more prominently than GDP in the set of indicators that the National Bureau of Economic Research reviews to inform its recession dates.[33] Third and finally, the growth rate of potential output can cause the size of the decline in GDP to vary between recessions. While changes in the unemployment rate can also vary over time due to demographic factors, this seems to have more limited implications over time relative to changes in potential output growth. The unemployment rate used in the severely adverse scenario will reflect an unemployment rate that has been observed in *severe* post-war U.S. recessions, measuring

[33] More recently, a monthly measure of GDP has been added to the list of indicators.

severity by the absolute level of and relative increase in the unemployment rate.[34]

c. After specifying the unemployment rate, the Board will specify the paths of other macroeconomic variables based on the paths of unemployment, income, and activity. However, many of these other variables have taken wildly divergent paths in previous recessions (*e.g.,* house prices), requiring the Board to use its informed judgment in selecting appropriate paths for these variables. In general, the path for these other variables will be based on their underlying structure at the time that the scenario is designed (*e.g.,* the relative fragility of the housing finance system).

d. The Board considered alternative methods for scenario design of the severely adverse scenario, including a probabilistic approach. The probabilistic approach constructs a baseline forecast from a large-scale macroeconomic model and identifies a scenario that would have a specific probabilistic likelihood given the baseline forecast. The Board believes that, at this time, the recession approach is better suited for developing the severely adverse scenario than a probabilistic approach because it guarantees a recession of some specified severity. In contrast, the probabilistic approach requires the choice of an extreme tail outcome—relative to baseline—to characterize the severely adverse scenario (*e.g.,* a 5 percent or a 1 percent. tail outcome). In practice, this choice is difficult as adverse economic outcomes are typically thought of in terms of how variables evolve in an absolute sense rather than how far away they lie in the probability space away from the baseline. In this sense, a scenario featuring a recession may be somewhat clearer and more straightforward to communicate. Finally, the probabilistic approach relies on estimates of uncertainty around the baseline scenario and such estimates are in practice model-dependent.

4.2.2 Setting the Unemployment Rate Under the Severely Adverse Scenario

a. The Board anticipates that the severely adverse scenario will feature an unemployment rate that increases between 3 to 5 percentage points from its initial level over the course of 6 to 8 calendar quarters.[35] The initial level will be set based on the conditions at the time that the scenario is designed. However, if a 3 to 5 percentage point increase in the unemployment rate does not raise the level of the unemployment rate to at least 10 percent—the average level to which it has increased in the most recent three severe recessions—the path of the unemployment rate in most cases will be specified so as to raise the unemployment rate to at least 10 percent.

b. This methodology is intended to generate scenarios that feature stressful outcomes but do not induce greater procyclicality in the financial system and macroeconomy. When the economy is in the early stages of a recovery, the unemployment rate in a baseline scenario generally trends downward, resulting in a larger difference between the path of the unemployment rate in the severely adverse scenario and the baseline scenario and a severely adverse scenario that is relatively more intense. Conversely, in a sustained strong expansion—when the unemployment rate may be below the level consistent with full employment—the unemployment in a baseline scenario generally trends upward, resulting in a smaller difference between the path of the unemployment rate in the severely adverse scenario and the baseline scenario and a severely adverse scenario that is relatively less intense. Historically, a 3 to 5 percentage point increase in unemployment rate is reflective of stressful conditions. As illustrated in Table 1, over the last half-century, the U.S. economy has experienced four severe post-war recessions. In all four of these recessions the unemployment rate increased 3 to 5 percentage points and in the three most recent of these recessions the unemployment rate reached a level between 9 percent and 11 percent.

c. Under this method, if the initial unemployment rate were low—as it would be after a sustained long expansion—the unemployment rate in the scenario would increase to a level as high as what has been seen in past severe recessions. However, if the initial unemployment rate were already high—as would be the case in the early stages of a recovery—the unemployment rate would exhibit a change as large as what has been seen in past severe recessions.

d. The Board believes that the typical increase in the unemployment rate in the severely adverse scenario will be about 4 percentage points. However, the Board will calibrate the increase in unemployment based on its views of the status of cyclical systemic risk. The Board intends to set the unemployment rate at the higher end of the range if the Board believed that cyclical systemic risks were high (as it would be after a sustained long expansion), and to the lower end of the range if cyclical systemic risks were low (as it would be in the earlier stages of a recovery). This may result in a scenario that is slightly more intense than normal if the Board believed that cyclical systemic risks were increasing in a period of robust expansion.[36] Conversely, it will allow the Board to specify a scenario that is slightly less intense than normal in an environment where systemic risks appeared subdued, such as in the early stages of an expansion. However, even at the lower end of the range of unemployment-rate increases, the scenario will still feature an increase in the unemployment rate similar to what has been seen in about half of the severe recessions of the last 50 years.

e. As indicated previously, if a 3 to 5 percentage point increase in the unemployment rate does not raise the level of the unemployment rate to 10 percent—the average level to which it has increased in the most recent three severe recessions—the path of the unemployment rate will be specified so as to raise the unemployment rate to 10 percent. Setting a floor for the unemployment rate at 10 percent recognizes the fact that not only do cyclical systemic risks build up at financial intermediaries during robust expansions but that these risks are also easily obscured by the buoyant environment.

f. In setting the increase in the unemployment rate, the Board will consider the extent to which analysis by economists, supervisors, and financial market experts finds cyclical systemic risks to be elevated (but difficult to be captured more precisely in one of the scenario's other variables). In addition, the Board—in light of impending shocks to the economy and financial system—will also take into consideration the extent to which a scenario of some increased severity might be necessary for the results of the stress test and the associated supervisory actions to sustain confidence in financial institutions.

g. While the approach to specifying the severely adverse scenario is designed to avoid adding sources of procyclicality to the financial system, it is not designed to explicitly offset any existing procyclical tendencies in the financial system. The purpose of the stress test scenarios is to make sure that the companies are properly capitalized to withstand severe economic and financial conditions, not to serve as an explicit countercyclical offset to the financial system.

h. In developing the approach to the unemployment rate, the Board also considered a method that would increase the unemployment rate to some fairly elevated fixed level over the course of 6 to 8 quarters. This will result in scenarios being more severe in robust expansions (when the unemployment rate is low) and less severe in the early stages of a recovery (when the unemployment rate is high) and so would not result in pro-cyclicality. Depending on the initial level of the unemployment rate, this approach could lead to only a very modest increase in the unemployment rate—or even a decline. As a result, this approach—while not procyclical—could result in scenarios not featuring stressful macroeconomic outcomes.

4.2.3 Setting the Other Variables in the Severely Adverse Scenario

a. Generally, all other variables in the severely adverse scenario will be specified to be consistent with the increase in the unemployment rate. The approach for specifying the paths of these variables in the scenario will be a combination of (1) how

[34] Even though all recessions feature increases in the unemployment rate and contractions in incomes and economic activity, the size of this change has varied over post-war U.S. recessions. Table 1 documents the variability in the depth of post-war U.S. recessions. Some recessions—labeled mild in Table 1—have been relatively modest with GDP edging down just slightly and the unemployment rate moving up about a percentage point. Other recessions—labeled severe in Table 1—have been much harsher with GDP dropping 3¾ percent and the unemployment rate moving up a total of about 4 percentage points.

[35] Six to eight quarters is the average number of quarters for which a severe recession lasts plus the average number of subsequent quarters over which the unemployment rate continues to rise. The variable length of the timeframe reflects the different paths to the peak unemployment rate depending on the severity of the scenario.

[36] Note, however, that the severity of the scenario would not exceed an implausible level: even at the upper end of the range of unemployment-rate increases, the path of the unemployment rate would still be consistent with severe post-war U.S. recessions.

economic models suggest that these variables should evolve given the path of the unemployment rate, (2) how these variables have typically evolved in past U.S. recessions, and (3) and evaluation of these and other factors.

b. Economic models—such as medium-scale macroeconomic models—should be able to generate plausible paths consistent with the unemployment rate for a number of scenario variables, such as real GDP growth, CPI inflation and short-term interest rates, which have relatively stable (direct or indirect) relationships with the unemployment rate (*e.g.,* Okun's Law, the Phillips Curve, and interest rate feedback rules). For some other variables, specifying their paths will require a case-by-case consideration. For example, declining house prices, which are an important source of stress to a company's balance sheet, are not a steadfast feature of recessions, and the historical relationship of house prices with the unemployment rate or any other variable that deteriorates in recessions is not strong. Simply adopting their typical path in a severe recession would likely underestimate risks stemming from the housing sector. In this case, some modified approach—in which perhaps recessions in which house prices declined were judgmentally weighted more heavily—will be appropriate.

c. In addition, judgment is necessary in projecting the path of a scenario's international variables. Recessions that occur simultaneously across countries are an important source of stress to the balance sheets of companies with notable international exposures but are not an invariable feature of the international economy. As a result, simply adopting the typical path of international variables in a severe U.S. recession would likely underestimate the risks stemming from the international economy. Consequently, an approach like that used for projecting house prices is followed where judgment and economic models together inform the path of international variables.

4.2.4 Adding Salient Risks to the Severely Adverse Scenario

a. The severely adverse scenario will be developed to reflect specific risks to the economic and financial outlook that are especially salient but will feature minimally in the scenario if the Board were only to use approaches that looked to past recessions or relied on historical relationships between variables.

b. There are some important instances when it will be appropriate to augment the recession approach with salient risks. For example, if an asset price were especially elevated and thus potentially vulnerable to an abrupt and potentially destabilizing decline, it would be appropriate to include such a decline in the scenario even if such a large drop were not typical in a severe recession. Likewise, if economic developments abroad were particularly unfavorable, assuming a weakening in international conditions larger than what typically occurs in severe U.S. recessions would likely also be appropriate.

c. Clearly, while the recession component of the severely adverse scenario is within some predictable range, the salient risk aspect of the scenario is far less so, and therefore, needs an annual assessment. Each year, the Board will identify the risks to the financial system and the domestic and international economic outlooks that appear more elevated than usual, using its internal analysis and supervisory information and in consultation with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC). Using the same information, the Board will then calibrate the paths of the macroeconomic and financial variables in the scenario to reflect these risks.

d. Detecting risks that have the potential to weaken the banking sector is particularly difficult when economic conditions are buoyant, as a boom can obscure the weaknesses present in the system. In sustained robust expansions, therefore, the selection of salient risks to augment the scenario will err on the side of including risks of uncertain significance.

e. The Board will factor in particular risks to the domestic and international macroeconomic outlook identified by its economists, bank supervisors, and financial market experts and make appropriate adjustments to the paths of specific economic variables. These adjustments will not be reflected in the general severity of the recession and, thus, all macroeconomic variables; rather, the adjustments will apply to a subset of variables to reflect co-movements in these variables that are historically less typical. The Board plans to discuss the motivation for the adjustments that it makes to variables to highlight systemic risks in the narrative describing the scenarios.[37]

*4.3 Approach for Formulating Macroeconomic Assumptions in the Adverse Scenario*

a. The adverse scenario can be developed in a number of different ways, and the selected approach will depend on a number of factors, including how the Board intends to use the results of the adverse scenario.[38] Generally, the Board believes that the companies should consider multiple adverse scenarios for their internal capital planning purposes, and likewise, it is appropriate that the Board consider more than one adverse scenario to assess a company's ability to withstand stress. Accordingly, the Board does not identify a single approach for specifying the adverse scenario. Rather, the adverse scenario will be formulated according to one of the possibilities listed below. The Board may vary the approach it uses for the adverse scenario each year so that the results of the scenario provide the most value to supervisors, in light of current condition of the economy and the financial services industry.

b. The simplest method to specify the adverse scenario is to develop a less severe version of the severely adverse scenario. For example, the adverse scenario could be formulated such that the deviations of the paths of the variables relative to the baseline were simply one-half of or two-thirds of the deviations of the paths of the variables relative to the baseline in the severely adverse scenario. *A priori,* specifying the adverse scenario in this way may appear unlikely to provide the greatest possible informational value to supervisors—given that it is just a less severe version of the severely adverse scenario. However, to the extent that the effect of macroeconomic variables on company loss positions and incomes are nonlinear, there could be potential value from this approach.

c. Another method to specify the adverse scenario is to capture risks in the adverse scenario that the Board believes should be understood better or should be monitored, but does not believe should be included in the severely adverse scenario, perhaps because these risks would render the scenario implausibly severe. For instance, the adverse scenario could feature sizable increases in oil or natural gas prices or shifts in the yield curve that are atypical in a recession. The adverse scenario might also feature less acute, but still consequential, adverse outcomes, such as a disruptive slowdown in growth from emerging-market economies.

d. Under the Board's stress test rules, covered companies are required to develop their own scenarios for mid-cycle company-run stress tests.[39] A particular combination of risks included in these scenarios may inform the design of the adverse scenario for annual stress tests. In this same vein, another possibility would be to use modified versions of the circumstances that companies describe in their living wills as being able to cause their failures.

e. It might also be informative to periodically use a stable adverse scenario, at least for a few consecutive years. Even if the scenario used for the stress test does not change over the credit cycle, if companies tighten and relax lending standards over the cycle, their loss rates under the adverse scenario—and indirectly the projected changes to capital—would decrease and increase, respectively. A consistent scenario would allow the direct observation of how capital fluctuates to reflect growing cyclical risks.

f. The Board may consider specifying the adverse scenario using the probabilistic approach described in section 4.2.1 (that is, with a specified lower probability of occurring than the severely adverse scenario but a greater probability of occurring than the baseline scenario). The approach has some intuitive appeal despite its shortcomings. For

[37] The means of effecting an adjustment to the severely adverse scenario to address salient systemic risks differs from the means used to adjust the unemployment rate. For example, in adjusting the scenario for an increased unemployment rate, the Board would modify all variables such that the future paths of the variables are similar to how these variables have moved historically. In contrast, to address salient risks, the Board may only modify a small number of variables in the scenario and, as such, their future paths in the scenario would be somewhat more atypical, albeit not implausible, given existing risks.

[38] For example, in the context of CCAR, the Board currently uses the adverse scenario as one consideration in evaluating a bank holding company's capital adequacy.

[39] 12 CFR 252.145.

example, using this approach for the adverse scenario could allow the Board to explore an alternative approach to develop stress testing scenarios and their effect on a company's net income and capital.

g. Finally, the Board could design the adverse scenario based on a menu of historical experiences—such as, a moderate recession (*e.g.,* the 1990–1991 recession); a stagflation event (*e.g.,* stagflation during 1974); an emerging markets crisis (*e.g.,* the Asian currency crisis of 1997–1998); an oil price shock (*e.g.,* the shock during the run up to the 1990–1991 recession); or high inflation shock (*e.g.,* the inflation pressures of 1977–1979). The Board believes these are important stresses that should be understood; however, there may be notable benefits from formulating the adverse scenario following other approaches—specifically, those described previously in this section—and consequently the Board does not believe that the adverse scenario should be limited to historical episodes only.

h. With the exception of cases in which the probabilistic approach is used to generate the adverse scenario, the adverse scenario will at a minimum contain a mild to moderate recession. This is because most of the value from investigating the implications of the risks described above is likely to be obtained from considering them in the context of balance sheets of companies that are under some stress.

**5. Approach for Formulating the Market Shock Component**

a. This section discusses the approach the Board proposes to adopt for developing the market shock component of the adverse and severely adverse scenarios appropriate for companies with significant trading activities. The design and specification of the market shock component differs from that of the macroeconomic scenarios because profits and losses from trading are measured in mark-to-market terms, while revenues and losses from traditional banking are generally measured using the accrual method. As noted above, another critical difference is the time-evolution of the market shock component. The market shock component consists of an instantaneous ''shock'' to a large number of risk factors that determine the mark-to-market value of trading positions, while the macroeconomic scenarios supply a projected path of economic variables that affect traditional banking activities over the entire planning period.

b. The development of the market shock component that are detailed in this section are as follows: baseline (subsection 5.1), severely adverse (subsection 5.2), and adverse (subsection 5.3).

*5.1 Approach for Formulating the Market Shock Component Under the Baseline Scenario*

By definition, market shocks are large, previously unanticipated moves in asset prices and rates. Because asset prices should, broadly speaking, reflect consensus opinions about the future evolution of the economy, large price movements, as envisioned in the market shock, should not occur along the baseline path. As a result, the market shock will not be included in the baseline scenario.

*5.2 Approach for Formulating the Market Shock Component Under the Severely Adverse Scenario*

This section addresses possible approaches to designing the market shock component in the severely adverse scenario, including important considerations for scenario design, possible approaches to designing scenarios, and a development strategy for implementing the preferred approach.

5.2.1 Design Considerations for Market Shocks

a. The general market practice for stressing a trading portfolio is to specify market shocks either in terms of extreme moves in observable, broad market indicators and risk factors or directly as large changes to the mark-to-market values of financial instruments. These moves can be specified either in relative terms or absolute terms. Supplying values of risk factors after a ''shock'' is roughly equivalent to the macroeconomic scenarios, which supply values for a set of economic and financial variables; however, trading stress testing differs from macroeconomic stress testing in several critical ways.

b. In the past, the Board used one of two approaches to specify market shocks. During SCAP and CCAR in 2011, the Board used a very general approach to market shocks and required companies to stress their trading positions using changes in market prices and rates experienced during the second half of 2008, without specifying risk factor shocks. This broad guidance resulted in inconsistency across companies both in terms of the severity and the application of shocks. In certain areas companies were permitted to use their own experience during the second half of 2008 to define shocks. This resulted in significant variation in shock severity across companies.

c. To enhance the consistency and comparability in market shocks for the stress tests in 2012 and 2013, the Board provided to each trading company more than 35,000 specific risk factor shocks, primarily based on market moves in the second half of 2008. While the number of risk factors used in companies' pricing and stress-testing models still typically exceed that provided in the Board's scenarios, the greater specificity resulted in more consistency in the scenario across companies. The benefit of the comprehensiveness of risk factor shocks is at least partly offset by potential difficulty in creating shocks that are coherent and internally consistent, particularly as the framework for developing market shocks deviates from historical events.

d. Also importantly, the ultimate losses associated with a given market shock will depend on a company's trading positions, which can make it difficult to rank order, *ex ante,* the severity of the scenarios. In certain instances, market shocks that include large market moves may not be particularly stressful for a given company. Aligning the market shock with the macroeconomic scenario for consistency may result in certain companies actually benefiting from risk factor moves of larger magnitude in the market scenario if the companies are hedging against salient risks to other parts of their business. Thus, the severity of market shocks must be calibrated to take into account how a complex set of risks, such as directional risks and basis risks, interacts with each other, given the companies' trading positions at the time of stress. For instance, a large depreciation in a foreign currency would benefit companies with net short positions in the currency while hurting those with net long positions. In addition, longer maturity positions may move differently from shorter maturity positions, adding further complexity.

e. The instantaneous nature of market shocks and the immediate recognition of mark-to-market losses add another element to the design of market shocks, and to determining the appropriate severity of shocks. For instance, in previous stress tests, the Board assumed that market moves that occurred over the six-month period in late 2008 would occur instantaneously. The design of the market shocks must factor in appropriate assumptions around the period of time during which market events will unfold and any associated market responses.

5.2.2 Approaches to Market Shock Design

a. As an additional component of the adverse and severely adverse scenarios, the Board plans to use a standardized set of market shocks that apply to all companies with significant trading activity. The market shocks could be based on a single historical episode, multiple historical periods, hypothetical (but plausible) events, or some combination of historical episodes and hypothetical events (hybrid approach). Depending on the type of hypothetical events, a scenario based on such events may result in changes in risk factors that were not previously observed. In the supervisory scenarios for 2012 and 2013, the shocks were largely based on relative moves in asset prices and rates during the second half of 2008, but also included some additional considerations to factor in the widening of spreads for European sovereigns and financial companies based on actual observation during the latter part of 2011.

b. For the market shock component in the severely adverse scenario, the Board plans to use the hybrid approach to develop shocks. The hybrid approach allows the Board to maintain certain core elements of consistency in market shocks each year while providing flexibility to add hypothetical elements based on market conditions at the time of the stress tests. In addition, this approach will help ensure internal consistency in the scenario because of its basis in historical episodes; however, combining the historical episode and hypothetical events may require small adjustments to ensure mutual consistency of the joint moves. In general, the hybrid approach provides considerable flexibility in developing scenarios that are relevant each year, and by introducing variations in the scenario, the approach will also reduce the ability of companies with significant trading activity to modify or shift their portfolios to minimize expected losses in the severely adverse market shock.

c. The Board has considered a number of alternative approaches for the design of market shocks. For example, the Board explored an option of providing tailored

market shocks for each trading company, using information on the companies' portfolio gathered through ongoing supervision, or other means. By specifically targeting known or potential vulnerabilities in a company's trading position, the tailored approach will be useful in assessing each company's capital adequacy as it relates to the company's idiosyncratic risk. However, the Board does not believe this approach to be well-suited for the stress tests required by regulation. Consistency and comparability are key features of annual supervisory stress tests and annual company-run stress tests required in the stress test rules. It would be difficult to use the information on the companies' portfolio to design a common set of shocks that are universally stressful for all covered companies. As a result, this approach will be better suited to more customized, tailored stress tests that are part of the company's internal capital planning process or to other supervisory efforts outside of the stress tests conducted under the capital rule and the stress test rules.

5.2.3 Development of the Market Shock

a. Consistent with the approach described above, the market shock component for the severely adverse scenario will incorporate key elements of market developments during the second half of 2008, but also incorporate observations from other periods or price and rate movements in certain markets that the Board deems to be plausible though such movements may not have been observed historically. Over time the Board also expects to rely less on market events of the second half of 2008 and more on hypothetical events or other historical episodes to develop the market shock.

b. The developments in the credit markets during the second half of 2008 were unprecedented, providing a reasonable basis for market shocks in the severely adverse scenario. During this period, key risk factors in virtually all asset classes experienced extremely large shocks; the collective breadth and intensity of the moves have no parallels in modern financial history and, on that basis, it seems likely that this episode will continue to be the most relevant historical scenario, although experience during other historical episodes may also guide the severity of the market shock component of the severely adverse scenario. Moreover, the risk factor moves during this episode are directly consistent with the ''recession'' approach that underlies the macroeconomic assumptions. However, market shocks based only on historical events could become stale and less relevant over time as the company's positions change, particularly if more salient features are not added each year.

c. While the market shocks based on the second half of 2008 are of unparalleled magnitude, the shocks may become less relevant over time as the companies' trading positions change. In addition, more recent events could highlight the companies' vulnerability to certain market events. For example, in 2011, Eurozone credit spreads in the sovereign and financial sectors surpassed those observed during the second half of 2008, necessitating the modification of the severely adverse market shock in 2012 and 2013 to reflect a salient source of stress to trading positions. As a result, it is important to incorporate both historical and hypothetical outcomes into market shocks for the severely adverse scenario. For the time being, the development of market shocks in the severely adverse scenario will begin with the risk factor movements in a particular historical period, such as the second half of 2008. The Board will then consider hypothetical but plausible outcomes, based on financial stability reports, supervisory information, and internal and external assessments of market risks and potential flash points. The hypothetical outcomes could originate from major geopolitical, economic, or financial market events with potentially significant impacts on market risk factors. The severity of these hypothetical moves will likely be guided by similar historical events, assumptions embedded in the companies' internal stress tests or market participants, and other available information.

d. Once broad market scenarios are agreed upon, specific risk factor groups will be targeted as the source of the trading stress. For example, a scenario involving the failure of a large, interconnected globally active financial institution could begin with a sharp increase in credit default swap spreads and a precipitous decline in asset prices across multiple markets, as investors become more risk averse and market liquidity evaporates. These broad market movements will be extrapolated to the granular level for all risk factors by examining transmission channels and the historical relationships between variables, though in some cases, the movement in particular risk factors may be amplified based on theoretical relationships, market observations, or the saliency to company trading books. If there is a disagreement between the risk factor movements in the historical event used in the scenario and the hypothetical event, the Board will reconcile the differences by assessing *a priori* expectation based on financial and economic theory and the importance of the risk factors to the trading positions of the covered companies.

*5.3 Approach for Formulating the Market Shock Under the Adverse Scenario*

a. The market shock component included in the adverse scenario will feature risk factor movements that are generally less significant than the market shock component of the severely adverse scenario. However, the adverse market shock may also feature risk factor shocks that are substantively different from those included in the severely adverse scenario, in order to provide useful information to supervisors. As in the case of the macroeconomic scenario, the market shock component in the adverse scenario can be developed in a number of different ways.

b. The adverse scenario could be differentiated from the severely adverse scenario by the absolute size of the shock, the scenario design process (*e.g.,* historical events versus hypothetical events), or some other criteria. The Board expects that as the market shock component of the adverse scenario may differ qualitatively from the market shock component of the severely adverse scenario, the results of adverse scenarios may be useful in identifying a particularly vulnerable area in a trading company's positions.

c. There are several possibilities for the adverse scenario and the Board may use a different approach each year to better explore the vulnerabilities of companies with significant trading activity. One approach is to use a scenario based on some combination of historical events. This approach is similar to the one used for for the market shock in 2012, where the market shock component was largely based on the second half of 2008, but also included a number of risk factor shocks that reflected the significant widening of spreads for European sovereigns and financials in late 2011. This approach will provide some consistency each year and provide an internally consistent scenario with minimal implementation burden. Having a relatively consistent adverse scenario may be useful as it potentially serves as a benchmark against the results of the severely adverse scenario and can be compared to past stress tests.

d. Another approach is to have an adverse scenario that is identical to the severely adverse scenario, except that the shocks are smaller in magnitude (*e.g.,* 100 basis points for adverse versus 200 basis points for severely adverse). This ''scaling approach'' generally fits well with an intuitive interpretation of ''adverse'' and ''severely adverse.'' Moreover, since the nature of the moves will be identical between the two classes of scenarios, there will be at least directional consistency in the risk factor inputs between scenarios. While under this approach the adverse scenario will be superficially identical to the severely adverse, the logic underlying the severely adverse scenario may not be applicable. For example, if the severely adverse scenario was based on a historical scenario, the same could not be said of the adverse scenario. It is also remains possible, although unlikely, that a scaled adverse scenario actually will result in greater losses, for some companies, than the severely adverse scenario with similar moves of greater magnitude. For example, if some companies are hedging against tail outcomes then the more extreme trading book dollar losses may not correspond to the most extreme market moves. The market shock component of the adverse scenario in 2013 was largely based on the scaling approach where a majority of risk factor shocks were smaller in magnitude than the severely adverse scenario, but it also featured long-term interest rate shocks that were not part of the severely adverse market shock.

e. Alternatively, the market shock component of an adverse scenario could differ substantially from the severely adverse scenario with respect to the sizes and nature of the shocks. Under this approach, the market shock component could be constructed using some combination of historical and hypothetical events, similar to the severely adverse scenario. As a result, the market shock component of the adverse scenario could be viewed as an alternative to the severely adverse scenario and, therefore, it is possible that the adverse scenario could have larger losses for some companies than the severely adverse scenario.

f. Finally, the design of the adverse scenario for annual stress tests could be informed by the companies' own trading scenarios used for their BHC-designed scenarios in CCAR and in their mid-cycle company-run stress tests.[40]

**6. Consistency Between the Macroeconomic Scenarios and the Market Shock**

a. As discussed earlier, the market shock comprises a set of movements in a very large number of risk factors that are realized instantaneously. Among the risk factors specified in the market shock are several variables also specified in the macroeconomic scenarios, such as short- and long-maturity interest rates on Treasury and corporate debt, the level and volatility of U.S. stock prices, and exchange rates.

b. The market shock component is an add-on to the macroeconomic scenarios that is applied to a subset of companies, with no assumed effect on other aspects of the stress tests such as balances, revenues, or other losses. As a result, the market shock component may not be always directionally consistent with the macroeconomic scenario. Because the market shock is designed, in part, to mimic the effects of a sudden market dislocation, while the macroeconomic scenarios are designed to provide a description of the evolution of the real economy over two or more years, assumed economic conditions can move in significantly different ways. In effect, the market shock can simulate a market panic, during which financial asset prices move rapidly in unexpected directions, and the macroeconomic assumptions can simulate the severe recession that follows. Indeed, the pattern of a financial crisis, characterized by a short period of wild swings in asset prices followed by a prolonged period of moribund activity, and a subsequent severe recession is familiar and plausible.

c. As discussed in section 4.2.4, the Board may feature a particularly salient risk in the macroeconomic assumptions for the severely adverse scenario, such as a fall in an elevated asset price. In such instances, the Board may also seek to reflect the same risk in one of the market shocks. For example, if the macroeconomic scenario were to feature a substantial decline in house prices, it may seem plausible for the market shock to also feature a significant decline in market values of any securities that are closely tied to the housing sector or residential mortgages.

d. In addition, as discussed in section 4.3, the Board may specify the macroeconomic assumptions in the adverse scenario in such a way as to explore risks qualitatively different from those in the severely adverse scenario. Depending on the nature and type of such risks, the Board may also seek to reflect these risks in one of the market shocks as appropriate.

**7. Timeline for Scenario Publication**

a. The Board will provide a description of the macroeconomic scenarios by no later than November 15 of each year. During the period immediately preceding the publication of the scenarios, the Board will collect and consider information from academics, professional forecasters, international organizations, domestic and foreign supervisors, and other private-sector analysts that regularly conduct stress tests based on U.S. and global economic and financial scenarios, including analysts at the covered companies. In addition, the Board will consult with the FDIC and the OCC on the salient risks to be considered in the scenarios. The Board expects to conduct this process in July and August of each year and to update the scenarios based on incoming macroeconomic data releases and other information through the end of October.

b. The Board expects to provide a broad overview of the market shock component along with the macroeconomic scenarios. The Board will publish the market shock templates by no later than December 1 of each year, and intends to publish the market shock earlier in the stress test and capital plan cycles to allow companies more time to conduct their stress tests.

TABLE 1—CLASSIFICATION OF U.S. RECESSIONS

| Peak | Trough | Severity | Duration (quarters) | Decline in Real GDP | Change in the Unemployment Rate during the Recession | Total change in the Unemployment rate (incl. after the Recession) |
|---|---|---|---|---|---|---|
| 1957Q3 | 1958Q2 | Severe | 4 (Medium) | −3.6 | 3.2 | 3.2 |
| 1960Q2 | 1961Q1 | Moderate | 4 (Medium) | −1.0 | 1.6 | 1.8 |
| 1969Q4 | 1970Q4 | Moderate | 5 (Medium) | −0.2 | 2.2 | 2.4 |
| 1973Q4 | 1975Q1 | Severe | 6 (Long) | −3.1 | 3.4 | 4.1 |
| 1980Q1 | 1980Q3 | Moderate | 3 (Short) | −2.2 | 1.4 | 1.4 |
| 1981Q3 | 1982Q4 | Severe | 6 (Long) | −2.8 | 3.3 | 3.3 |
| 1990Q3 | 1991Q1 | Mild | 3 (Short) | −1.3 | 0.9 | 1.9 |
| 2001Q1 | 2001Q4 | Mild | 4 (Medium) | 0.2 | 1.3 | 2.0 |
| 2007Q4 | 2009Q2 | Severe | 7 (Long) | −4.3 | 4.5 | 5.1 |
| Average | | Severe | 6 | −3.5 | 3.7 | 3.9 |
| Average | | Moderate | 4 | −1.1 | 1.8 | 1.8 |
| Average | | Mild | 3 | −0.6 | 1.1 | 1.9 |

Source: Bureau of Economic Analysis, National Income and Product Accounts, Comprehensive Revision on July 31, 2013.

By order of the Board of Governors of the Federal Reserve System, November 6, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2013–27009 Filed 11–27–13; 8:45 am]

BILLING CODE 6210–01–P

[40] 12 CFR 252.145.

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 40

**[Docket No. RM13–13–000; Order No. 789]**

## Regional Reliability Standard BAL–002–WECC–2—Contingency Reserve

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves regional Reliability Standard BAL–002–WECC–2 (Contingency Reserve). The North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) submitted the regional Reliability Standard to the Commission for approval. The regional Reliability Standard applies to balancing authorities and reserve sharing groups in the WECC Region and is meant to specify the quantity and types of

contingency reserve required to ensure reliability under normal and abnormal conditions.

**DATES:** *Effective Date:* This rule will become effective January 28, 2014.

**FOR FURTHER INFORMATION CONTACT:**

Andrés López Esquerra (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6128, *Andres.Lopez@ferc.gov.*

Matthew Vlissides (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8408, *Matthew.Vlissides@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** 145 FERC ¶ 61,141, United States of America, Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

## Regional Reliability Standard BAL–002–WECC–2—Contingency Reserve

*Docket No. RM13–13–000*

Order No. 789

Final Rule

(Issued November 21, 2013)

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission approves regional Reliability Standard BAL–002–WECC–2 (Contingency Reserve). The North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) submitted the regional Reliability Standard to the Commission for approval. The WECC regional Reliability Standard applies to balancing authorities and reserve sharing groups in the WECC Region and is meant to specify the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions.

2. The Commission approves the associated violation risk factors (VRFs) and violation severity levels (VSLs), implementation plan, and effective date proposed by NERC and WECC. The Commission also approves the retirement of WECC regional Reliability Standard BAL–STD–002–0 (Operating Reserves) and the removal of two WECC Regional Definitions, ''Non-Spinning Reserve'' and ''Spinning Reserve,'' from the Glossary of Terms Used in NERC Reliability Standards (NERC Glossary).[2] In addition, the Commission directs NERC to submit an informational filing after the first two years of implementation of regional Reliability Standard BAL–002–WECC–2 that addresses the adequacy of contingency reserve in the Western Interconnection.

### I. Background

*A. Mandatory Reliability Standards*

3. Section 215(c) of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[3]

4. A Regional Entity may develop a Reliability Standard for Commission approval to be effective in that region only.[4] In Order No. 672, the Commission stated that:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) a regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[5]

5. On April 19, 2007, the Commission accepted delegation agreements between NERC and each of the eight Regional Entities.[6] In the order, the Commission accepted WECC as a Regional Entity.

*B. NERC Reliability Standard BAL–002–1 (Disturbance Control Performance)*

6. In Order No. 693, the Commission approved NERC Reliability Standard BAL–002–0.[7] On January 10, 2011, the Commission approved a revised version of the NERC Reliability Standard, BAL–002–1 (Disturbance Control Performance), which NERC developed and submitted to address directives contained in Order No. 693.[8] The purpose of NERC Reliability Standard BAL–002–1 is to ensure that a balancing authority is able to use its contingency reserve to balance resources and demand and return Interconnection frequency within defined limits following a Reportable Disturbance.[9]

*C. WECC Regional Reliability Standard BAL–STD–002–0*

7. On June 8, 2007, the Commission approved WECC regional Reliability Standard BAL–STD–002–0, which is currently in effect.[10] The Commission stated that regional Reliability Standard BAL–STD–002–0 was more stringent than the NERC Reliability Standard BAL–002–0 because the WECC regional Reliability Standard required: (1) a more stringent minimum reserve requirement; and (2) restoration of contingency reserves within 60 minutes, as opposed to the 90-minute restoration period required by the NERC Reliability Standard BAL–002–0.[11] The Commission directed WECC to make minor modifications to regional Reliability Standard BAL–STD–002–0. For example, the Commission determined that: (1) regional definitions should conform to definitions set forth in the NERC Glossary unless a specific deviation has been justified; and (2) documents that are referenced in the Reliability Standard should be attached to the Reliability Standards. The Commission also found that it is important that regional Reliability Standards and NERC Reliability Standards achieve a reasonable level of consistency in their structure so that there is a common understanding of the elements. Finally, the Commission directed WECC to address stakeholder

[1] 16 U.S.C. 824o.

[2] North American Electric Reliability Corporation Definitions Used in the Rules of Procedure, Appendix 2 to the NERC Rules of Procedure (effective September 3, 2013).

[3] 16 U.S.C. 824o(e).

[4] 16 U.S.C. 824o(e)(4). A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO. *See* 16 U.S.C. 824o(a)(7) and (e)(4).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 291, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,060, *order on reh'g,* 120 FERC ¶ 61,260 (2007).

[7] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[8] *North American Electric Reliability Corp.,* 134 FERC ¶ 61,015 (2011).

[9] The NERC Glossary defines Contingency Reserve as ''[t]he provision of capacity deployed by the Balancing Authority to meet the Disturbance Control Standard (DCS) and other NERC and Regional Reliability Organization contingency requirements.'' The NERC Glossary defines Reportable Disturbance as ''[a]ny event that causes an [Area Control Error (ACE)] change greater than or equal to 80% of a Balancing Authority's or reserve sharing group's most severe contingency. The definition of a reportable disturbance is specified by each Regional Reliability Organization. This definition may not be retroactively adjusted in response to observed performance.''

[10] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 (2007).

[11] *Id.* P 53.

concerns regarding ambiguities in the terms ''load responsibility'' and ''firm transaction.'' [12]

*D. Remanded WECC Regional Reliability Standard BAL–002–WECC–1*

8. On March 25, 2009, NERC submitted to the Commission for approval WECC regional Reliability Standard BAL–002–WECC–1 (Contingency Reserves). In Order No. 740, the Commission remanded regional Reliability Standard BAL–002–WECC–1.[13] In Order No. 740, the Commission identified five issues with remanded regional Reliability Standard BAL–002–WECC–1: (1) the restoration period for contingency reserve; (2) the calculation of minimum contingency reserve; (3) the use of firm load to meet the contingency reserve requirement; (4) the use of demand-side management as a resource; and (5) miscellaneous directives.[14]

1. Restoration Period for Contingency Reserve

9. The Commission stated that, while the currently-effective WECC regional Reliability Standard BAL–STD–002–0 requires restoration of contingency reserve within 60 minutes, the remanded WECC regional Reliability Standard BAL–002–WECC–1 would have extended the restoration period to 90 minutes. The Commission determined that NERC and WECC did not justify the extension of the reserve restoration period from 60 minutes to 90 minutes or that such an extension created an acceptable level of risk within the Western Interconnection.

2. Calculation of Minimum Contingency Reserve

10. The Commission stated that WECC regional Reliability Standard BAL–STD–002–0 currently requires that minimum contingency reserve must equal the greater of: (1) the loss of generating capacity due to forced outages of generation or transmission equipment that would result from the most severe single contingency or (2) the sum of five percent of load responsibility served by hydro generation and seven percent of the load responsibility served by thermal generation. The remanded WECC regional Reliability Standard BAL–002–WECC–1 included a similar requirement, except that instead of basing the calculation of minimum contingency reserve on the sum of five percent of load responsibility served by hydro generation and seven percent of the load responsibility served by thermal generation, the minimum contingency reserve calculation would be based on the sum of three percent of load (generation minus station service minus net actual interchange) plus three percent of net generation (generation minus station service).

11. WECC submitted eight hours of data from each of the four operating seasons (summer, fall, winter, and spring, both on and off-peak), which demonstrated that the proposed methodology for calculating minimum contingency reserve would reduce total contingency reserve required in the Western Interconnection for each of the eight hours assessed when compared with the methodology in the currently-effective WECC regional Reliability Standard BAL–STD–002–0.

12. The Commission accepted WECC's proposal, finding that ''WECC's proposed calculation of minimum contingency reserves is more stringent than the national requirement and could be part of a future proposal that the Commission could find to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.'' [15] The Commission observed, however, that ''WECC also states that the proposed regional Reliability Standard does not excuse any non-performance with the continent-wide Disturbance Control Standard, which requires each balancing authority or reserve sharing group to activate sufficient contingency reserve to comply with the Disturbance Control Standard.'' [16]

13. The Commission also stated that, if WECC resubmitted its proposed methodology for calculating minimum contingency reserve, WECC and NERC could support its proposal with ''audits specifically focused on contingency reserves and whether the balancing authorities are meeting the adequacy and deliverability requirements . . . [t]his auditing also could address the concerns raised by some entities in WECC that the original eight hours of data provided in NERC's petition is insufficient to demonstrate that the proposed minimum contingency reserve requirements are sufficiently stringent to ensure that entities within the Western Interconnection will meet the requirements of NERC's continent-wide Disturbance Control Standard, BAL–002–0.'' [17]

3. Use of Firm Load To Meet Contingency Reserve Requirement

14. In the Notice of Proposed Rulemaking preceding Order No. 740, the Commission stated that, unlike the currently-effective regional Reliability Standard BAL–STD–002–0, the remanded regional Reliability Standard BAL–002–WECC–1 was not technically sound because it allowed balancing authorities and reserve sharing groups within WECC to use firm load to meet their minimum contingency reserve requirements once the reliability coordinator declared a capacity or energy emergency.[18] However, in Order No. 740, the Commission accepted WECC's proposal finding that, although remanded regional Reliability Standard BAL–002–WECC–1 allowed balancing authorities and reserve sharing groups to use ''Load, other than Interruptible Load, once the Reliability Coordinator has declared a capacity or energy emergency,'' these entities would not be authorized to shed firm load unless the applicable reliability coordinator had issued a level 3 energy emergency alert pursuant to Reliability Standard EOP–002–2.1. The Commission directed WECC to develop revised language to clarify this point.[19]

4. Demand-Side Management as a Resource

15. The Commission determined that remanded regional Reliability Standard BAL–002–WECC–1 did not allow demand-side management that is technically capable of providing this service to be used as a resource for contingency reserve. The Commission directed WECC to develop modifications that would explicitly provide that demand-side management technically capable of providing this service may be used as a resource for both spinning and non-spinning contingency reserve.[20]

5. Miscellaneous Directives

16. The Commission directed WECC to consider comments regarding the meaning of the term ''net generation.'' The Commission also directed WECC to consider comments stating that the WECC regional Reliability Standard did not assign any responsibility or obligations on generator owners and generator operators, and that balancing authorities may be required to carry a disproportionate share of the contingency reserve obligation within the Western Interconnection.[21]

[12] *Id.* P 56.

[13] *Version One Regional Reliability Standard for Resource and Demand Balancing,* Order No. 740, 75 FR 65,964, 133 FERC ¶ 61,063 (2010).

[14] Order No. 740, 133 FERC ¶ 61,063 at PP 26, 39, 49, 60, 66.

[15] *Id.* P 39.

[16] *Id.*

[17] *Id.* P 40.

[18] *Id.* P 43.

[19] *Id.* PP 48–49.

[20] *Id.* P 61.

[21] *Id.* P 66.

*E. Proposed Regional Reliability Standard BAL–002–WECC–2*

17. On April 12, 2013, NERC and WECC petitioned the Commission to approve regional Reliability Standard BAL–002–WECC–2 and the associated violation risk factors and violation severity levels, effective date, and implementation plan. The petition also requests retirement of the currently-effective WECC regional Reliability Standard BAL–STD–002–0 and removal of two WECC Regional Definitions, ''Non-Spinning Reserve'' and ''Spinning Reserve,'' from the NERC Glossary. The petition states that the proposed WECC regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest because it satisfies the factors set forth in Order No. 672, which the Commission applies when reviewing a proposed Reliability Standard.[22]

18. NERC states in the petition that the Resource and Demand Balancing (BAL) group of Reliability Standards ensure that resources and demand are balanced to maintain Interconnection frequency within limits. The petition states that the purpose of NERC Reliability Standard BAL–002–1 (Disturbance Control Performance) is to ensure the balancing authority is able to use contingency reserve to balance resources and demand and return Interconnection frequency within defined limits following a Reportable Disturbance. NERC maintains that the purpose of the proposed WECC regional Reliability Standard BAL–002–WECC–2 is to provide a regional Reliability Standard that specifies the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions.[23]

19. NERC asserts that the proposed regional Reliability Standard addresses the five issues identified in Order No. 740, which remanded the previously proposed WECC regional Reliability Standard BAL–002–WECC–1. First, the petition explains that proposed regional Reliability Standard BAL–002–WECC–2, Requirement R1, includes a 60-minute restoration period for contingency reserve, which is the same as the currently-effective regional WECC Reliability Standard BAL–STD–002–0.[24]

20. Second, the petition includes two-years of additional data to support the method for calculating minimum contingency reserve proposed in WECC regional Reliability Standard BAL–002–WECC–2, Requirement R1, which is the same as the calculation proposed and accepted by the Commission in the remanded WECC regional Reliability Standard BAL–002–WECC–1.[25]

21. Third, the petition states that the proposed WECC regional Reliability Standard BAL–002–WECC–2, Requirement R1, was modified to clarify that balancing authorities and reserve sharing groups within WECC are subject to the same restrictions regarding the use of firm load for contingency reserve as balancing authorities elsewhere operating under the NERC Reliability Standards. NERC indicates that it has clarified the connection to the Energy Emergency Level 3 by incorporating language from Reliability Standard EOP–002–2.1, Attachment 1, Section B, into WECC regional Reliability Standard BAL–002–WECC–2, Requirement R1.[26]

22. Fourth, according to the petition, WECC regional Reliability Standard BAL–002–WECC–2, Requirement R1 was modified to explicitly provide that demand-side management technically capable of providing the service may be used as a resource for contingency reserve.[27]

23. Fifth, the petition states that WECC regional Reliability Standard BAL–002–WECC–2 replaces the term ''net generation'' with the phrase ''generating energy values average over each Clock Hour.'' The petition notes that the regional Reliability Standard also includes a reference to Opinion No. 464, which addresses the issue of behind-the-meter generation, in response to comments raised in the Order No. 740 rulemaking.[28] The petition also states that WECC regional Reliability Standard BAL–002–WECC–2 allows for impacted balancing authorities and reserve sharing groups to enter into transactions to provide contingency reserve for another balancing authority or procure contingency reserve from another balancing authority to more equitably allocate generation for purposes of the reserve calculation. The petition further states that the NERC Functional Model, Version 5, more closely aligns the tasks in the WECC regional Reliability Standard BAL–002–WECC–2 with balancing authorities than to generator operators.[29]

*F. Notice of Proposed Rulemaking*

24. On July 18, 2013, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve regional Reliability Standard BAL–002–WECC–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission also proposed to approve the associated violation risk factors, violation severity levels, implementation plan, effective date, and the retirement of WECC regional Reliability Standard BAL–STD–002–0 (Operating Reserves) and the removal of two WECC Regional Definitions, ''Non-Spinning Reserve'' and ''Spinning Reserve,'' from the NERC Glossary. The NOPR stated that the WECC regional Reliability Standard is more stringent than the NERC Reliability Standard BAL–002–1 because the regional Reliability Standard requires applicable entities to restore contingency reserve within 60 minutes following the Disturbance Recovery Period while the NERC Reliability Standard only requires restoration of contingency reserve within 90 minutes. The NOPR also stated that the method for calculating minimum contingency reserve in the regional Reliability Standard is more stringent than Requirement R3.1 in NERC Reliability Standard BAL–002–1 because it requires minimum contingency reserve levels that will be at least equal to the NERC Reliability Standard minimum (i.e., equal to the most severe single contingency) and more often will be greater. The NOPR further stated that NERC and WECC addressed the directives in Order No. 740. In addition, the NOPR proposed to direct NERC to submit an informational filing after the first two years of implementation of regional Reliability Standard BAL–002–WECC–2 that addresses the adequacy of contingency reserve in the Western Interconnection.

25. In response to the NOPR, NERC and WECC, jointly, and Powerex Corp. (Powerex), Portland General Electric Company (Portland), California Independent System Operator Corporation (CAISO), and Tacoma Power (Tacoma) filed comments. We address below the issues raised in the NOPR and comments.

## II. Discussion

26. Pursuant to FPA section 215(d)(2), we approve WECC regional Reliability Standard BAL–002–WECC–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. For applicable entities in the WECC Region, regional Reliability Standard BAL–002–WECC–2 specifies

[22] Petition, Exhibit A.

[23] Petition at 2.

[24] *Id.* at 12.

[25] *Id.* at 13–16.

[26] *Id.* at 18.

[27] *Id.* at 16–18.

[28] *California Indep. Sys. Operation Corp.,* Opinion No. 464, 104 FERC ¶ 61,196 (2003).

[29] NERC, Reliability Functional Model, Version 5 (approved May 2010), *available at http://www.nerc.com/files/Functional_Model_V5_Final_2009Dec1.pdf.*

the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions. WECC regional Reliability Standard is more stringent than the NERC Reliability Standard BAL–002–1 because the regional Reliability Standard requires applicable entities to restore contingency reserve within 60 minutes following the Disturbance Recovery Period while the NERC Reliability Standard only requires restoration of contingency reserve within 90 minutes. In addition, the method for calculating minimum contingency reserve in the regional Reliability Standard is more stringent than Requirement R3.1 in NERC Reliability Standard BAL–002–1 because it requires minimum contingency reserve levels that will be at least equal to the NERC Reliability Standard minimum (i.e., equal to the most severe single contingency) and more often will be greater.[30] We also conclude that NERC and WECC addressed the Commission's directives in Order No. 740. In addition to approving regional Reliability Standard BAL–002–WECC–2, the Commission directs NERC to submit an informational filing after the first two years of implementation of the regional Reliability Standard that addresses the adequacy of contingency reserve in the Western Interconnection.

27. We discuss below the following issues raised in the NOPR and comments: (A) new methodology for calculating minimum contingency reserve; (B) elimination of interruptible imports requirement; (C) qualifying resources for contingency reserve; (D) use of the term ''Load''; (E) use of net generation data to calculate contingency reserve; (F) violation risk factors and violation severity levels; (G) removal of terms from the NERC Glossary; and (H) implementation plan and effective date.

*A. New Methodology for Calculating Minimum Contingency Reserve*

NERC Petition

28. WECC regional Reliability Standard BAL–002–WECC–2 includes a new methodology for calculating minimum contingency reserve, based on the greater of the most severe single contingency or the sum of three percent of load plus three percent of net generation. The new methodology is different from the methodology in WECC regional Reliability Standard BAL–STD–002–0, which is based on the greater of the most severe single contingency or the sum of five percent of load responsibility served by hydro generation and seven percent of the load responsibility served by thermal generation.

29. WECC provides ''two years' worth of additional data showing the amount of contingency reserves that would be calculated for each Balancing Authority and Reserve Sharing Group under the proposed methodology.'' [31] WECC states that ''during the two-year period of 2010–2012, the average increase/decrease in Contingency Reserve required under the existing methodology juxtaposed to the proposed methodology was an average decrease of 137 MW across the Western Interconnection'' and that a 137 MW decrease represents ''.000932 of WECC's peak load and .001934 of WECC's minimum load'' within that two-year period.[32] WECC concludes that ''implementation of the proposed methodology will, on average, reduce the amount of Contingency Reserve held within the Interconnection; however, the average change is so small in comparison to the load served within the Interconnection that it should have no adverse impact on reliability.'' [33]

NOPR

30. In the NOPR, the Commission proposed to approve the new methodology and to direct NERC to submit an informational filing following implementation of the regional Reliability Standard that addresses the adequacy of contingency reserve levels in the Western Interconnection.

31. The NOPR stated that, while the data submitted by NERC shows *an average* decrease of 137 MW, the data also shows that the largest single decrease in contingency reserve equaled 826 MW during the two-year study period when comparing the current and proposed methodologies.[34] The NOPR observed that, at the time of the 826 MW decrease (i.e., 9/15/10 at 14:00), the contingency reserve value using the current methodology for calculating minimum contingency reserve was 8259 MW versus 7434 MW using the new methodology. The NOPR stated that the 826 MW decrease represented a 10 percent decrease in contingency reserve at that time interval.[35] The NOPR noted that the data also show a widening gap over time (e.g., a difference of 114 MW at the beginning date but 192 MW at the end date).[36]

32. The NOPR proposed to direct NERC to submit an informational filing to the Commission assessing contingency reserve levels in the Western Interconnection after the first two years of implementation of the regional Reliability Standard. In the information filing, NERC, in consultation with WECC, would provide an assessment of minimum contingency reserve levels in the Western Interconnection following implementation of the new methodology. The NOPR stated that the informational filing should assess whether the new methodology for calculating minimum contingency reserve levels has had an adverse impact on reliability in the Western Interconnection and should include the data that NERC and WECC use to assess the sufficiency of the minimum contingency reserve levels under the new methodology. The NOPR stated that such data could include, but need not be limited to an increase or decrease in the ''Average Percent Non-Recovery Disturbance Control Standards (DCS) Events,'' [37] an increase or decrease in the average Contingency Reserve Restoration Period, an increase or decrease in the number of events larger than the minimum contingency reserve levels, and any other information that NERC or WECC deem relevant. The NOPR proposed to direct NERC to submit the informational filing to the Commission 90 days after the end of the two-year period following implementation. The NOPR stated that NERC may choose to submit the informational filing sooner if NERC identifies issues with contingency reserve levels in the Western Interconnection that may require immediate action, and that the Commission would review the informational filing to determine whether any action is necessary.

Comments

33. NERC and WECC support the NOPR proposal. NERC commits to submit an informational filing that assesses whether the methodology for

[30] As stated in Order No. 740, the proposed WECC regional Reliability Standard does not excuse non-performance with NERC Reliability Standard BAL–002–1. Order No. 740, 133 FERC ¶ 61,063 at P 39.

[31] Petition at 13.

[32] *Id.*

[33] *Id.* at 16.

[34] Petition, Exhibit G (data point at date/time interval 9/15/10 at 14:00).

[35] Petition at 16.

[36] The 114 MW and 192 MW values are calculated by plotting a trend line on the contingency reserve data submitted by WECC using the existing methodology and plotting a trend line on the contingency reserve data submitted by WECC using the proposed methodology. The initial difference between the two trend lines is 114 MW while the difference at the end of the trend lines is 192 MW.

[37] *See* NERC, Metric AL2–4 (Average Percent Non-Recovery of Disturbance Control Standard (DCS) Events), *available at http://www.nerc.com/pa/RAPA/ri/Pages/DCSEvents.aspx.*

calculating minimum contingency reserve levels has had an adverse impact on reliability in the Western Interconnection. NERC states that the informational filing will include the data used to make the assessment and will clarify the effect of WECC regional Reliability Standard BAL–002–WECC–2 on reliability in the Western Interconnection.

34. Tacoma and Portland maintain that the new methodology for calculating contingency reserve is ambiguous because the methodology uses values based on hourly integrated load and hourly integrated generation (i.e., averages over the course of a given hour). Tacoma and Portland assert that this is a change over the use of instantaneous megawatt values under WECC regional Reliability Standard BAL–STD–002–0. Tacoma and Portland state that it is unclear how the new methodology should be applied because it is unclear whether the hour referred to is the previous hour, a forecast for the next hour, or a value for the hour determined after-the-fact. Tacoma states that if the hour referred to is the previous hour, the value will no longer be pertinent to real-time operational data and real-time application.

35. Portland states that the new methodology could result in significant reductions in contingency reserve at specific times, which could have an impact on frequency response capabilities. Portland also questions the data WECC submitted to support the new methodology. Portland states that three of the six entities surveyed by WECC did not use the previous methodology (i.e., the sum of five percent of load responsibility served by hydro generation and seven percent of the load responsibility served by thermal generation) and instead based contingency reserve values on the most severe single contingency. In addition, Portland states that ''two years of data is not enough to show the variability in water years for a region structured around hydropower.''[38] Portland recommends requiring 10 years' worth of data. Portland also states that the new methodology unfairly shifts the burden on providing reserves to the sink balancing authorities and load-serving entities, which may not be able to acquire the reserves. Portland further states that, if the Commission approves the regional Reliability Standard, NERC should be required to file annual reports for five years instead of a single report after two years. Portland maintains that balancing authorities may be conservative and carry additional reserves in the first year and less so in later years, and thus requiring reporting for five years will provide a more accurate picture of the regional Reliability Standard's impact. Portland also states that NERC should provide a comparative analysis of the new methodology and the old methodology.

Commission Determination

36. The Commission adopts the NOPR proposal directing NERC, in consultation with WECC, to submit an informational filing two years after implementation of WECC regional Reliability Standard BAL–002–WECC–2 that assesses whether the new methodology for calculating minimum contingency reserve levels has had an adverse impact on reliability in the Western Interconnection. Consistent with NERC's comments, the informational filing should include the data that NERC and WECC use to assess the sufficiency of the minimum contingency reserve levels under the new methodology. NERC is directed to submit the informational filing 90 days after the end of the two-year period following implementation. The Commission will review the informational filing to determine whether any action is warranted. NERC may submit the informational filing sooner if NERC or WECC identifies issues with contingency reserve levels in the Western Interconnection that require more immediate action.

37. We reject the comments submitted by Tacoma and Portland concerning the new methodology and informational filing. We determine that the use of ''hourly integrated Load'' and ''hourly integrated generation'' is not ambiguous or substantively different from the current practice of calculating contingency reserve. Regional Reliability Standard BAL–002–WECC–2, Requirement R1.3, explains that these terms are based on ''real-time hourly load and generating energy values averaged over each Clock Hour.'' Moreover, the term ''Clock Hour'' is defined in the NERC Glossary and refers to the current hour.[39] In addition, using average values over the course of an hour is not different from what is required by regional Reliability Standard BAL–STD–002–0, which states in the Measures section that ''a Responsible Entity identified in Section A.4 must maintain 100% of required Operating Reserve levels based upon data averaged over each clock hour.'' Ultimately, regional Reliability Standard BAL–002–WECC–2, Requirement R1, now requires minimum contingency reserve to be calculated from load and generation amounts, but it does not change the time frame for calculating minimum contingency reserve.

38. We also reject Portland's comment that the new methodology shifts the burden of providing reserves to sink balancing authorities and load serving entities, which may be unable to acquire the necessary reserves. As we stated in Order No. 740, we agree with NERC and WECC that the ''equal split between load and generation [in the new methodology] represents a reasonable balance to moderate shifts in Contingency Reserve responsibility and costs among the applicable entities.''[40] Moreover, Portland does not provide any evidence that sink balancing authorities or load-serving entities will be unable to acquire the necessary reserves.[41]

39. With respect to Portland's concerns regarding WECC's data and the informational filing, the informational filing is intended to identify any issues regarding the adequacy of contingency reserve levels in the Western Interconnection and the impact on other reliability areas such as frequency response. We are satisfied that WECC provided enough representative data to conclude that the new methodology will likely not result in significantly less average contingency reserve in the Western Interconnection. However, for the reasons discussed above, the Commission believes that it is necessary to monitor and assess contingency reserve levels in the Western Interconnection following implementation of the regional Reliability Standard. We are not inclined at this time to require more than two years of data as Portland suggests. The Commission intends to analyze the two-year informational filing and determine whether it adequately addresses the sufficiency of the proposed required reserve levels in the Western Interconnection. Portland or other entities may also examine the filing and, if there is sufficient technical analysis that suggests contingency reserve levels may be inadequate, the Commission may direct NERC and/or WECC to submit additional informational filings in the future. The

[38] Portland Comments at 4.

[39] ''Clock Hour: The 60-minute period ending at:00. All surveys, measurements, and reports are based on Clock Hour periods unless specifically noted.'' NERC Glossary at 19.

[40] Petition at 16; *see also* Order No. 740, 133 FERC ¶ 61,063 at P 41.

[41] In developing the implementation plan, NERC recognized that the new methodology would require responsible entities to enter into contractual agreements and negotiations and allowed sufficient time for responsible entities to enter into such arrangements. Petition, Exhibit A at 5.

Commission adopts the NOPR proposal to direct NERC to file an informational filing two years after implementation of the regional Reliability Standard.

*B. Removal of Interruptible Imports Requirement NERC Petition*

40. Regional Reliability Standard BAL–002–WECC–2, Requirement R3, states that:

> Each Sink Balancing Authority and each sink Reserve Sharing Group shall maintain an amount of Operating Reserve, in addition to the minimum Contingency Reserve in Requirement R1, equal to the amount of Operating Reserve–Supplemental for any Interchange Transaction designated as part of the Source Balancing Authority's Operating Reserve–Supplemental or source Reserve Sharing Group's Operating Reserve–Supplemental, except within the first sixty minutes following an event requiring the activation of Contingency Reserve.

41. NERC maintains that Requirement R3 is a clarification of an existing requirement in WECC regional Reliability Standard BAL–STD–002–0, which requires additional reserves for interruptible imports. NERC explains that the standard drafting team removed the term ''interruptible imports'' because it is not a defined term in the NERC Glossary and is subject to misinterpretation. NERC states that the standard drafting team replaced the term with clarifying language describing which types of transactions must be covered by additional reserves. NERC observes that the continent-wide Reliability Standard BAL–002–1 does not require reserves for Interchange Transactions designated as part of the source balancing authority or source reserve sharing group Operating Reserve-Supplemental and thus the requirement in the regional Reliability Standard is more stringent than the continent-wide Reliability Standard.

Comments

42. Powerex maintains that, while the term ''interruptible imports'' has not been clearly defined by WECC or NERC, the solution is not to remove the term from the regional Reliability Standard. Powerex states that removal of interruptible imports results in an inferior regional Reliability Standard because it effectively eliminates any Reliability Standard specifying a reserve requirement for interruptible imports. Powerex maintains that balancing authorities will no longer be required to set aside any capacity to cover interruptible imports into their balancing authority areas. Powerex states that the interruptible imports requirement has served to ''differentiate an import of interruptible energy—a product that may be curtailed for ANY reason . . . from a 'firm' energy import that is supported by sufficient generating resources within the source [balancing authority] to assure the energy will not be curtailed during the delivery period.'' [42]

Commission Determination

43. The Commission rejects Powerex's comments concerning removal of the term ''interruptible imports.'' The Commission agrees with NERC and WECC that Requirement R3 identifies the types of transactions, including Interchange Transactions, that must be covered by additional reserves. Accordingly, we disagree with Powerex that the concept of interruptible imports has been removed from the regional Reliability Standard. Replacing the term ''interruptible imports'' with the NERC-defined term ''Interchange Transaction'' eliminates ambiguity from the regional Reliability Standard by including all types of Interchange Transactions (e.g., firm or interruptible) as it pertains to calculating Operating Reserve. Moreover, in response to comments during the standards development process, the standard drafting team reinforced this view in stating that ''[Requirement] R3 of the proposed standard directly addresses the concept of interruptible schedules and [Requirement] R4 addresses the concept of on-demand energy.'' [43]

44. Powerex states that ''in WECC there exists an unacceptable lack of clarity with respect to reserve requirements associated with energy interchange scheduling.'' Powerex also ''acknowledges that the proposed BAL–002–WECC–2 standard alone cannot address all of these concerns, but believes it is premature, unwarranted, and problematic to eliminate the requirement that interruptible imports carry 100% reserves until these broader concerns are addressed by some other regulatory requirement.'' We disagree with Powerex that it is appropriate to condition approval of regional Reliability Standard BAL–002–WECC–2, and the removal of the term ''interruptible imports,'' on first addressing existing problems concerning reserve requirements associated with energy interchange scheduling. Instead, we agree with NERC and WECC that the regional Reliability Standard, in requiring additional reserves for Interchange Transactions, is more stringent than the continent-wide Reliability Standard BAL–002, and we approve the requirement on that basis.

*C. Qualifying Resources for Contingency Reserve*

NERC Petition

45. WECC regional Reliability Standard BAL–002–WECC–2, Requirement R.1.1.2 states that contingency reserve may be comprised of any combination of the reserve types specified below:

- Operating Reserve—Spinning
- Operating Reserve—Supplemental
- Interchange Transactions designated by the Source Balancing.
- Authority as Operating Reserve—Supplemental
- Reserve held by other entities by agreement that is deliverable on Firm Transmission Service.
- A resource, other than generation or load, that can provide energy or reduce energy consumption.
- Load, including demand response resources, Demand-Side Management resources, Direct Control Load Management, Interruptible Load or Interruptible Demand, or any other Load made available for curtailment by the Balancing Authority or the Reserve Sharing Group via contract or agreement.
- All other load, not identified above, once the Reliability Coordinator has declared an energy emergency alert signifying that firm load interruption is imminent or in progress.

46. ''Operating Reserve—Spinning'' is defined in the NERC Glossary to mean ''generation (synchronized or capable of being synchronized to the system) that is fully available to serve load within the Disturbance Recovery Period following the contingency event; or load fully removable from the system within the Disturbance Recovery Period following the contingency event.''

Comments

47. CAISO seeks clarification that non-traditional resources, including electric storage facilities, may qualify as ''Operating Reserve—Spinning'' so long as they meet the technical and performance requirements in Requirement R2 (i.e., that the resources must be immediately and automatically responsive to frequency deviations through the action of a control system and capable of fully responding within ten minutes).

Commission Determination

48. The Commission determines that non-traditional resources, including electric storage facilities, may qualify as ''Operating Reserve—Spinning''

[42] Powerex Comments at 8.

[43] Petition, Exhibit C at 11.

provided those resources satisfy the technical and performance requirements in Requirement R2. Our determination is supported by the standard drafting team's response to a comment during the standard drafting process where the standard drafting team stated that ''technologies, such as batteries, both contemplated and not yet contemplated are included in the standard as potential resources—so long as the undefined resource can meet the response characteristics described in the standard * * * The language does not preclude any specific technology; rather, the language delineates how that technology must [] respond.'' [44] We also note that non-traditional resources could contribute to contingency reserve under the regional Reliability Standard if they are resources, ''other than generation or load, that can provide energy or reduce energy consumption.''

*D. Use of the Term Load in Requirement R.1.1*

NERC Petition

49. WECC regional Reliability Standard BAL–002–WECC–2, Requirement R.1.1, states that minimum contingency reserve must equal the ''amount of Contingency Reserve equal to the loss of the most severe single contingency'' or the ''amount of Contingency Reserve equal to the sum of three percent of hourly integrated Load plus three percent of hourly integrated generation.''

Comments

50. Tacoma states that the term ''Load'' is defined in the NERC Glossary as ''[a]n end-use device or customer that receives power from the electric system.'' Tacoma maintains that the term ''Load'' in Requirement R.1.1 cannot be interpreted to be a device or customer that receives power from the electric system because ''the requirement directs the taking of a percentage of the 'Load' and treating it as a measurement of power, like megawatts.'' Tacoma recommends that the defined term ''Load'' should be replaced with the undefined term ''load.''

Commission Determination

51. Based on the context of Requirement R.1.1, the Commission understands that the use of the term ''Load'' does not refer to an end-use device or customer. Instead, it refers to the power consumption associated with the end-use device or customer (i.e., Load), which is then applied in calculating minimum contingency reserve levels. With that understanding, the Commission will not direct NERC to change ''Load'' to ''load'' in Requirement R.1.1 as requested by Tacoma. NERC and WECC may modify this language in the next version of the regional Reliability Standard.

*E. Use of Net Generation Data To Calculate Contingency Reserve*

NERC Petition

52. NERC states that the ''calculation of minimum Contingency Reserves is based on three percent of net generation and three percent of net load and this fairly balances the responsibilities of Contingency Reserve providers with the financial obligations of those who would benefit most from those services.'' [45] Requirement R1.1.3 states that the minimum contingency reserve calculation should be based on ''real-time hourly load and generating energy values averaged over each Clock Hour (excluding Qualifying Facilities covered in 18 CFR 292.101, as addressed in FERC Opinion 464).'' In Requirement R1.1.3, NERC states that the standard drafting team replaced the term ''net generation'' with ''generating energy values averaged over each Clock Hour.'' NERC maintains that the substitution was in response to comments in the Order No. 740 rulemaking regarding the definition of the term ''net generation.''

Comments

53. Tacoma states that changing metered data to net generation for real-time operations would result in undue burden and cause a delay in implementation because many balancing authorities do not use net generation in their minimum contingency reserve calculation. Tacoma states that it uses gross generation for real-time operations and includes station service within its entity load. Tacoma explains that it prepares annual reports that include net generation, but Tacoma asserts that using net generation in real-time operations will require ''significant changes in the data and telemetry that must be available in real-time operations.'' [46]

Commission Determination

54. The Commission notes that NERC's petition states that the ''calculation of minimum Contingency Reserves is based on three percent of net generation.'' [47] Based on NERC's description, the NOPR also used the term ''net generation'' at various points. However, Requirement R1 of WECC regional Reliability Standard BAL–002–WECC–2, by design, does not use the term ''net generation.'' Instead, Requirement R1.1.3 states that the minimum contingency reserve calculation should be based on ''real-time hourly load and generating energy values averaged over each Clock Hour (excluding Qualifying Facilities covered in 18 CFR 292.101, as addressed in FERC Opinion 464).'' Accordingly, Tacoma's concern about the use of ''net generation'' to calculate minimum contingency reserve is moot.

*F. Violation Risk Factors and Violation Severity Levels*

55. The petition states that each Requirement of the proposed WECC regional Reliability Standard BAL–002–WECC–2 includes one violation risk factor and one violation severity level and that the ranges of penalties for violations will be based on the sanctions table and supporting penalty determination process described in the Commission-approved NERC Sanctions Guideline. The NOPR proposed to approve the violation risk factors and violation severity levels for the Requirements of WECC regional Reliability Standard BAL–002–WECC–2 as consistent with the Commission's established guidelines.[48] The Commission did not receive comments regarding the proposed violation risk factors and violation severity levels. Accordingly, the Commission approves the violation risk factors and violation severity levels for the requirements of WECC regional Reliability Standard BAL–002–WECC–2.

*G. Removal of Terms From NERC Glossary*

56. The petition states that proposed WECC regional Reliability Standard BAL–002–WECC–2 replaces the terms ''Spinning Reserve'' with ''Operating Reserve-Spinning'' and ''Non-Spinning Reserve'' with ''Operating Reserve-Supplemental'' to ensure comparable treatment of demand-side management with conventional generation, or any other technology, and to allow demand-side management to be considered as a resource for contingency reserve. The petition states that Operating Reserve-Spinning and Operating Reserve-Supplemental have glossary definitions that are inclusive of demand-side management, including controllable load. Accordingly, the petition seeks revision of the NERC Glossary to remove the two WECC Regional Definitions,

[44] Petition, Exhibit C at 20.

[45] Petition at 16.

[46] Tacoma Comments at 3.

[47] Petition at 16.

[48] *See North American Electric Reliability Corp.*, 135 FERC ¶ 61,166 (2011).

Non-Spinning Reserve and Spinning Reserve. With the removal of Non-Spinning Reserve and Spinning Reserve from the proposed WECC regional Reliability Standard BAL–002–WECC–2, the NOPR proposed to approve removal of those WECC Regional Definitions from the NERC Glossary. The Commission did not receive comments regarding the proposed revisions to the NERC Glossary. Accordingly, the Commission approves the proposed revisions to the NERC Glossary.

*H. Implementation Plan and Effective Date*

57. The petition proposes that WECC regional Reliability Standard BAL–002–WECC–2 become effective on the first day of the third quarter following applicable regulatory approval. The petition states that the proposed WECC regional Reliability Standard may require execution of contracts by some applicable entities before implementation can occur, and the proposed effective date allows time for applicable entities to finalize needed contracts. The petition also proposes to retire the currently-effective WECC regional Reliability Standard BAL–STD–002–0 on the proposed effective date.

58. The NOPR proposed to approve the petition's implementation plan and effective date for the WECC regional Reliability Standard BAL–002–WECC–2. The Commission did not receive comments regarding the proposed implementation plan and effective date. Accordingly, the Commission approves the implementation plan and effective date for WECC regional Reliability Standard BAL–002–WECC–2.

**III. Information Collection Statement**

59. The following collection of information contained in this Final Rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[49] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[50] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicited comments on the need for and the purpose of the information contained in regional Reliability Standard BAL–002–WECC–2 and the corresponding burden to implement the regional Reliability Standard. The Commission received comments on specific requirements in the regional Reliability Standard, which we address in this Final Rule. However, the Commission did not receive any comments on our reporting burden estimates.

60. *Public Reporting Burden:* The burden and cost estimates below are based on the need for applicable entities to revise documentation, already required by the current WECC regional Reliability Standard BAL–STD–002–0, to reflect certain changes made in WECC regional Reliability Standard BAL–002–WECC–2. Our estimates are based on the NERC Compliance Registry as of May 30, 2013, which indicates that 36 balancing authorities and reserve sharing groups are registered within WECC.

| Improved requirement | Year | Number of respondents [51] | Number of annual responses per respondent | Average burden hours per response | Estimated total annual burden hours |
|---|---|---|---|---|---|
| (1) | (2) | (3) | (1)*(2)*(3) | | |
| Update Existing Documentation to Conform with Proposed Regional Reliability Standard | 1 | 36 | 1 | [52] 1 | 36 |
| Total | | | | | 36 |

[51] NERC balancing authorities and reserve sharing groups are responsible for the improved requirement. Further, if a single entity is registered as both a balancing authority and reserve sharing group, that entity is counted as one unique entity.

[52] The Commission bases the hourly reporting burden on the time for an engineer to implement the requirements of the final rule.

*Estimated Total Annual Burden Hours for Collection:* (Compliance/Documentation) = 36 hours

*Costs to Comply with PRA:*

- Year 1: $2,160.
- Year 2 and ongoing: $0.

61. Year 1 costs include updating existing documentation, already required by the current WECC regional Reliability Standard BAL–STD–002–0, to reflect changes in WECC regional Reliability Standard BAL–002–WECC–2. For the burden category above, the cost is $60/hour (salary plus benefits) for an engineer.[53] The estimated breakdown of annual cost is as follows:

- Year 1
- Update Existing Documentation to Conform with Proposed Regional Reliability Standard: 36 entities * (1 hours/response * $60/hour) = $2,160.

*Title:* FERC–725E, Mandatory Reliability Standards-WECC (Western Electric Coordinating Council)

*Action:* Proposed Collection of Information

*OMB Control No:* 1902–0246

*Respondents:* Business or other for-profit, and not-for-profit institutions.

*Frequency of Responses:* One-time.

*Necessity of the Information:* Regional Reliability Standard BAL–002–WECC–2 implements the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the regional Reliability Standard ensures that balancing authorities and reserve sharing groups in the WECC Region have the quantity and types of contingency reserve required to ensure reliability under normal and abnormal conditions.

*Internal review:* The Commission has reviewed regional Reliability Standard BAL–002–WECC–2 and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review,

[49] 44 U.S.C. 3507(d).

[50] 5 CFR 1320.11.

[53] Labor rates from Bureau of Labor Statistics (BLS) (*http://bls.gov/oes/current/naics2_22.htm*). Loaded costs are BLS rates divided by 0.703 and rounded to the nearest dollar (*http://www.bls.gov/news.release/ecec.nr0.htm*).

that there is specific, objective support for the burden estimates associated with the information requirements.

62. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *Data Clearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

**IV. Environmental Analysis**

63. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[54] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[55] The actions directed herein fall within this categorical exclusion in the Commission's regulations.

**V. Regulatory Flexibility Act**

64. The Regulatory Flexibility Act of 1980 (RFA)[56] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. As discussed above, regional Reliability Standard BAL–002–WECC–2 applies to 36 registered balancing authorities and reserve sharing groups in the NERC Compliance Registry. Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that, of the 36 registered balancing authorities and reserve sharing groups, two may qualify as small entities.[57]

65. The Commission estimates that, on average, each of the two affected small entities will have an estimated cost of $60 in Year 1 and no further ongoing costs. These figures are based on information collection costs plus additional costs for compliance. The Commission does not consider this to be a significant economic impact for small entities because it should not represent a significant percentage of the small entities' operating budgets. The Commission solicited comments concerning is proposed Regulatory Flexibility Act certification and did not receive any comments. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

**VI. Document Availability**

66. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

67. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

68. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

**VII. Effective Date and Congressional Notification**

69. These regulations are effective January 28, 2014. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–28626 Filed 11–27–13; 8:45 am]

BILLING CODE 6717–01–P

[54] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[55] 18 CFR 380.4(a)(2)(ii).

[56] 5 U.S.C. 601–612.

[57] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act (SBA), which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632. According to the Small Business Administration, an electric utility is defined as ''small'' if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 172, 173, 178, and 180

**[Docket No. FDA–2010–F–0320]**

## Food Additive Regulations; Incorporation by Reference of the Food Chemicals Codex, 7th Edition

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is amending select food additive regulations that incorporate by reference food-grade specifications from prior editions of the Food Chemicals Codex (FCC) to incorporate by reference food-grade specifications from the FCC 7th Edition (FCC 7). We are taking this action in response to a petition filed by the United States Pharmacopeial Convention (U.S.P. or petitioner).

**DATES:** This rule is effective November 29, 2013. See the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section for information on the filing of objections. Submit either electronic or written objections and requests for a hearing by December 30, 2013. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications listed in the rule as of November 29, 2013.

**ADDRESSES:** You may submit either electronic or written objections and requests for a hearing, identified by Docket No. FDA–2010–F–0320, by any of the following methods:

**Electronic Submissions**

Submit electronic objections in the following way:

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

**Written Submissions**

Submit written objections in the following ways:

• *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

*Instructions:* All submissions received must include the Agency name and Docket No. FDA–2010–F–0320 for this rulemaking. All objections received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Mical Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1278.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In a notice published in the **Federal Register** of August 10, 2010 (75 FR 48353), we announced that the U.S.P., 12601 Twinbrook Pkwy., Rockville, MD 20852, had filed a food additive petition. The petition proposed that select food additive regulations in parts 172, 173, 178, and 180 (21 CFR parts 172, 173, 178, and 180), which incorporate by reference food-grade specifications from prior editions of the FCC, be amended to incorporate by reference food-grade specifications from FCC 7.

The FCC is a compendium of specification monographs for substances used as food ingredients. The Committee on Food Chemicals Codex of the Food and Nutrition Board, Institute of Medicine (IOM) of the National Academies published the first through fifth editions of the FCC. In 2006, U.S.P. acquired the rights to the FCC, and subsequently published the sixth, seventh, and eighth editions. Specifications and methods published in the FCC have been incorporated by reference in various sections of 21 CFR parts 73, 170, 172, 173, 178, 180, and 184.

Since acquiring rights to the FCC, U.S.P. has developed and continues to develop standards for food ingredients through public participation with a goal of biennial publication of the FCC. Draft monographs and data are provided by food ingredient manufacturers, users, and suppliers and are published for public review and comment on U.S.P.'s Web site. U.S.P. scientists and its Food Ingredients Expert Committee review these data and, if necessary, conduct laboratory tests. Once approved by the Food Ingredients Expert Committee, new or updated monographs are published in the next edition or Supplement to the FCC.

The petitioner initially requested amendments to 39 existing references to older editions of the FCC in parts 172, 173, 178, and 180 to incorporate by reference the specifications contained in FCC 7. The petitioner explained that of the regulations it has requested to be updated, 15 regulations refer to the third edition of the FCC (FCC III, published in 1981); 18 regulations refer to the fourth edition of the FCC (FCC IV, published in 1996); 4 regulations refer to the fifth edition of the FCC (FCC V, published in 2004); and 2 regulations refer to the sixth edition of the FCC (FCC 6, published in 2008). (The IOM used roman numerals when referring to editions of the FCC, e.g., FCC III and FCC V. U.S.P. uses numbers rather than roman numerals to refer to the editions of FCC that it has published, e.g., FCC 6 and FCC 7.) In most cases, the references to the FCC in the regulations are to an entire FCC monograph. Some references, however, only refer to part of an FCC monograph, i.e., a single specification, or to an FCC analytical method.

After discussions with us in July 2011, the petitioner subsequently narrowed its petition to exclude six regulations ((§§ 172.172.723(b)(3), 172.833(b)(4), 172.846(b), 172.858(a), 180.25(b), and 180.30(a)). The current regulation for epoxidized soybean oil (§ 172.723(b)(3)) includes a limit of 10 milligrams per kilogram (mg/kg) for heavy metals (as lead (Pb)), as determined by Method II of the ''Heavy Metals Test'' in FCC IV. FCC 7, however, does not include a monograph for epoxidized soybean oil and does not include the ''Heavy Metals Test'' as a general test in the appendices of FCC 7. Accordingly, § 172.723(b)(3) has been excluded from the petition. U.S.P. has excluded the remaining five regulations (§§ 172.833(b)(4), 172.846(b), 172.858(a), 180.25(b), and 180.30(a)) based on its need to further investigate the bases for such updates.

The petitioner cited several reasons for updating the references to older editions of the FCC to specifications and analytical methodologies contained in FCC 7. First, previous editions of the FCC are no longer readily available to industry or the public, since U.S.P. does not maintain and therefore cannot provide copies of monographs from FCC III, IV, or V to industry or the public. (Under 5 U.S.C. 552(a) and 1 CFR 51.7(a)(4), a publication that is to be incorporated by reference must be ''reasonably available'' to and capable of being used by persons affected by the publication.) Second, the petitioner maintained that updating the references to older editions of the FCC to FCC 7 may avoid confusion, inconsistency, and lack of uniformity in the quality of food additives and ingredients manufactured and sold. Third, the petitioner noted that, in many cases, the editions of the FCC prior to FCC 7 may employ outdated analytical methodologies and equipment that do not reflect current scientific practices, and which may be difficult to obtain.

We note that, subsequent to our analysis of FCC 7, the U.S.P. published the eighth edition of the FCC (FCC 8) in March 2012. Initiating a review of FCC 8 at this time would delay issuance of this final rule. To avoid a delay in updating the references to the FCC in our food additive regulations, we are proceeding with issuing this final rule to incorporate by reference FCC 7. The specific food additive regulations explain how to obtain copies of FCC 7. As appropriate, we will provide further updates to our food additive regulations to reflect more recent versions of the FCC.

## II. Evaluation of Amendments to Parts 172, 173, 178, and 180

We compared the specifications and analytical methods in the versions of the FCC currently referenced in the regulations to the specifications and analytical methods in FCC 7 (Ref. 1). In addition, we note that some general changes were made to FCC monographs published in or after FCC IV that remain in FCC 7. One change is that the older FCC monographs discussed in this document that contain a specification limit for heavy metals (as Pb) were updated in FCC V to remove this specification, and, when appropriate, to replace it with an individual specification limit for each relevant heavy metal. Many FCC 7 monographs have also adopted lower lead limit specifications compared to earlier FCC editions, to reduce lead in food. Furthermore, if an earlier edition of the FCC contained a specification limit for arsenic, that specification has been removed unless the monograph met one of the following criteria: (1) The ingredient or additive is a high-volume consumption item (greater than 25 million pounds per year), (2) the ingredient or additive is derived from a natural (mineral) source where arsenic may be an intrinsic contaminant, and/or

(3) there is reason to believe that arsenic constitutes a significant part of the total heavy metals content (Ref. 1).

An FCC monograph typically consists of a description of the substance, its functional use, the recommended specifications for the substance, and testing methodology. In many cases, there are minor differences between the description or functional use of a substance provided in FCC 7 compared to the description or functional use of a substance provided in earlier editions of the FCC and the CFR. However, FCC 7 provides the description and functional use of a substance specified in a monograph for informational purposes, e.g., to help industry understand the possible functions of the ingredients, rather than as a required standard. Other differences (e.g., solvent or instrument changes) between the specifications and analytical methods in the version of the FCC currently referenced in the regulations and the specifications and analytical methods in FCC 7 are discussed further in the FDA Memoranda from D. Folmer to M. Honigfort (Refs. 1 through 3).

After review of each proposed amendment, we are updating the regulations shown in table 1 to incorporate FCC 7 by reference. We note that the safety of these additives has been previously considered and there are no safety concerns with the proposed changes to incorporate by reference the specifications and analytical methodologies contained in FCC 7. We are also amending § 178.1005 to incorporate by reference the specifications for ''Acidity,'' ''Chloride'' and ''Other requirements'' for Hydrogen Peroxide Concentrate in the United States Pharmacopeia, 36th Revision (2013). This updates the reference to the United States Pharmacopeia XX (1980) already cited in § 178.1005. We compared the United States Pharmacopeia XX (1980) monograph for Hydrogen Peroxide Concentrate to the United States Pharmacopeia, 36th Revision (2013) monograph for Hydrogen Peroxide Concentrate and determined that this update is safe and appropriate (Ref. 4).

TABLE 1—LIST OF REGULATIONS

| 21 CFR Section | Name of Additive | FCC 7 Reference |
|---|---|---|
| 172.167(b) | Hydrogen peroxide | Meets FCC 7 specifications. |
| 172.320(b)(1) | Amino acids | Meets FCC 7 specifications. |
| 172.345(b) | Folic acid (folacin) | Meets FCC 7 specifications. |
| 172.379(b) | Vitamin $D_2$ | Meets FCC 7 specifications. |
| 172.380(b) | Vitamin $D_3$ | Meets FCC 7 specifications. |
| 172.665(d)(2) | Gellan gum | Residual isopropyl alcohol limit not to exceed 0.075% by the procedure described in the Gellan Gum monograph in FCC 7. |
| 172.712(b) | 1,3-Butylene glycol | Conforms to FCC 7 identity and specifications. |
| 172.736(b)(2) | Glycerides and polyglycides of hydrogenated vegetable oils. | Acid value not greater than 2, and hydroxyl value, not greater than 56 as determined by ''Acid Value'' and ''Hydroxyl Value'' methods. |
| 172.780(b) | Acacia (gum arabic) | Meets FCC 7 specifications. |
| 172.800(b)(2) | Acesulfame potassium | Fluoride content not more than 30 milligrams per kilogram (mg/kg) as determined by Method III of the Fluoride Limit Test (We have amended the specification for fluoride content in acesulfame potassium in § 172.800(b)(2) to replace ''parts per million'' with ''mg/kg'' to be consistent with terminology used elsewhere in the regulations cited in this rule.). |
| 172.804(b) | Aspartame | Meets FCC 7 specifications. |
| 172.810 | Dioctyl sodium sulfosuccinate | Meets FCC 7 specifications. |
| 172.812(a) | Glycine | Meets FCC 7 specifications. |
| 172.831(b) | Sucralose | Meets FCC 7 specifications. |
| 172.841(b) | Polydextrose | Meets FCC 7 specifications. |
| 172.862(b)(1) | Oleic acid derived from tall oil fatty acids | Meets FCC 7 specifications except that titer (solidification point) shall not exceed 13.5 degrees Celsius and unsaponifiable matter shall not exceed 0.5%. |
| 172.867(b) | Olestra | Meets FCC 7 specifications. |
| 172.869(b)(6) | Sucrose oligoesters | Acid value not more than 4.0 as determined by the method ''Acid Value,'' Appendix VII, Method I (Commercial Fatty Acids). |
| 172.869(b)(7) | Sucrose oligoesters | Residue on ignition not more than 0.7% as determined by ''Residue on Ignition,'' Appendix IIC, Method I (using a 1 gram sample). |
| 172.869(b)(8) | Sucrose oligoesters | Residual methanol not more than 10 mg/kg as determined by the method listed in the monograph for ''Sucrose Fatty Acid Esters''. |
| 172.869(b)(9) | Sucrose oligoesters | Residual dimethyl sulfoxide not more than 2.0 mg/kg as determined by the method listed in the monograph ''Sucrose Fatty Acid Esters''. |
| 172.869(b)(10) | Sucrose oligoesters | Residual isobutyl alcohol not more than 10 mg/kg as determined by the method listed in the monograph ''Sucrose Fatty Acid Esters''. |
| 172.869(b)(11) | Sucrose oligoesters | Lead not more than 1.0 mg/kg as determined by ''Atomic Absorption Spectrophotometric Graphite Furnace Method,'' Method I. |
| 173.160(d) | *Candida gulliermondii* | Citric acid produced must conform to FCC 7 specifications (under ''Citric acid''). |
| 173.165(d) | *Candida lipolytica* | Citric acid produced must conform to FCC 7 specifications (under ''Citric acid''). |
| 173.228(a) | Ethyl acetate | Meets FCC 7 specifications. |
| 173.280(c) | Solvent extraction process for citric acid | Citric acid produced must conform to FCC 7 specifications (under ''Citric acid''). |

TABLE 1—LIST OF REGULATIONS—Continued

| 21 CFR Section | Name of Additive | FCC 7 Reference |
|---|---|---|
| 173.310(c) | Boiler water additives; Sodium carboxymethylcellulose. | Contains not less than 95% sodium carboxymethylcellulose on a dry-weight basis, with maximum substitution of 0.9 carboxymethylcellulose groups per anhydroglucose unit, and with a minimum viscosity of 15 centipoises for 2% by weight aqueous determined by the ''Viscosity of Cellulose Gum'' method cited in FCC 7. |
| 173.310(c) | Boiler water additives; Sorbitol anhydride esters. | Polysorbate 20 present in sorbitol anhydride esters meets FCC 7 specifications (We have amended the limitation for sorbitol anhydride esters in § 173.310(c) to replace ''parts per million'' with ''mg/kg'' to be consistent with terminology used elsewhere in the regulations cited in this rule.). |
| 173.368(c) | Ozone | Meets FCC 7 specifications. |
| 178.1005(c) | Hydrogen peroxide solution | Meets FCC 7 specifications (We are also amending the regulation to incorporate by reference the United States Pharmacopeia, 36th Revision.). |
| 180.37(b) | Saccharin, ammonium saccharin, calcium saccharin, and sodium saccharin. | Meets FCC 7 specifications. |

The petitioner also requested amending § 173.115(b)(3) (Alpha-acetolactate decarboxylase (α-ALDC) enzyme preparation derived from a recombinant *Bacillus subtilis*). The current regulation requires that the enzyme preparation should meet the general and additional requirements for enzyme preparations found in FCC IV. FCC 7 specifically includes α-ALDC in the list of enzyme preparations, but does not contain an assay method specific to α-ALDC. We are not amending § 173.115(b)(3) at this time to incorporate by reference the specifications in FCC 7 because the assay method for α-ALDC has been omitted from FCC 7.

Additionally, on our own initiative, we are amending certain provisions in parts 172, 173, 178, and 180 to update the address at which copies of FCC 7 can be examined. In most cases, the existing regulations refer to an FDA address at ''5100 Paint Branch Pkwy., College Park, MD 20740.'' However, in 2013, we consolidated our library holdings at our main library at 10903 New Hampshire Ave., Silver Spring, MD 20993. Therefore, we are amending various provisions to reflect the current FDA address at which copies of FCC 7 can be examined.

## III. Conclusion

We reviewed data in the petition and other relevant material and conclude that the proposed amendments to the regulations listed in table 1 to incorporate by reference food-grade specifications and analytical methodologies from FCC 7, as discussed in Section II of this document, are safe and appropriate. Therefore, we are amending parts 172, 173, 178, and 180 as set forth in this document.

## IV. Public Availability of Documents

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), we will delete from the documents any materials that are not available for public disclosure.

## V. Environmental Impact

Under part H in § 171.1(c), either an environmental assessment under 21 CFR 25.40 or a claim of categorical exclusion under § 25.30 (21 CFR 25.30) or § 25.32 (21 CFR 25.32) is required to be submitted with a food additive petition. As initially filed by U.S.P., the petition contained a claim of categorical exclusion under § 25.30(i), which applies to corrections and technical changes in regulations. We reviewed the petitioner's claim of categorical exclusion and stated in our original filing notice of August 10, 2010, that we agreed that, under § 25.30(i), the proposed action was of a type that would not individually or cumulatively have a significant effect on the human environment and therefore that neither an environmental assessment nor an environmental impact statement would be required.

However, upon further review, we decided that as a group, the actions being requested are neither corrections nor technical changes and therefore the categorical exclusion in § 25.30(i) would not be applicable. Accordingly we announced, in an amended filing notice published in the **Federal Register** of January 18, 2012 (77 FR 2492), that U.S.P. had submitted an environmental assessment for the petition in lieu of a claim of categorical exclusion and that we would review the potential environmental impact of the petition. We placed the petitioner's environmental assessment on display in the Division of Dockets Management for public review and comment.

We have carefully reviewed the environmental assessment and considered the potential environmental effects of this action. We have concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. Our finding of no significant impact and the evidence supporting that finding, contained in the environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

## VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VII. Objections

If you will be adversely affected by one or more provisions of this regulation, you may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a

hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection. It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation 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.*

## VIII. Section 301(ll) of the Federal Food, Drug, and Cosmetic Act

Our review of this petition was limited to section 409 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348). This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, the Food and Drug Administration Amendments Act of 2007, which was signed into law on September 27, 2007, amended the FD&C Act to, among other things, add section 301(ll) of the FD&C Act (21 U.S.C. 331(ll)). Section 301(ll) of the FD&C Act prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exceptions in section 301(ll)(1) to (ll)(4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food containing these additives. Accordingly, this final rule should not be construed to be a statement that a food containing these additives, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act. Furthermore, this language is included in all food additive final rules and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

## IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.*

1. FDA Memorandum from D. Folmer to M. Honigfort, October 24, 2011.
2. FDA Memorandum from D. Folmer to M. Honigfort, February 8, 2013.
3. FDA Memorandum from D. Folmer to M. Honigfort, February 27, 2013.
4. FDA Memorandum from D. Folmer to M. Honigfort, October 31, 2013.

## List of Subjects

*21 CFR Part 172*

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

*21 CFR Part 173*

Food additives, Incorporation by reference.

*21 CFR Part 178*

Food additives, Food packaging, Incorporation by reference.

*21 CFR Part 180*

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 172, 173, 178, and 180 are amended as follows:

## PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Amend § 172.167 by revising paragraph (b) to read as follows:

### § 172.167 Silver nitrate and hydrogen peroxide solution.

* * * * *

(b) Hydrogen peroxide meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 496–497, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 3. Revise § 172.320 to read as follows:

### § 172.320 Amino acids.

The food additive amino acids may be safely used as nutrients added to foods in accordance with the following conditions:

(a) The food additive consists of one or more of the following individual amino acids in the free, hydrated, or anhydrous form, or as the hydrochloride, sodium, or potassium salts:

(1) L-Alanine
(2) L-Arginine
(3) L-Asparagine
(4) L-Aspartic acid
(5) L-Cysteine
(6) L-Cystine
(7) L-Glutamic acid
(8) L-Glutamine
(9) Aminoacetic acid (glycine)
(10) L-Histidine
(11) L-Isoleucine
(12) L-Leucine
(13) L-Lysine
(14) DL-Methionine (not for infant foods)
(15) L-Methionine
(16) L-Phenylalanine
(17) L-Proline
(18) L-Serine
(19) L-Threonine
(20) L-Tryptophan
(21) L-Tyrosine
(22) L-Valine

(b) The food additive meets the following specifications:

(1) As found in Food Chemicals Codex:

(i) L-Alanine, pages 28 and 29.
(ii) L-Arginine, pages 69 and 70.
(iii) L-Arginine Monohydrochloride, pages 70 and 71.
(iv) L-Cysteine Monohydrochloride, pages 269 and 270.
(v) L-Cystine, pages 270 and 271.
(vi) Aminoacetic acid (glycine), pages 457 and 458.
(vii) L-Leucine, pages 577 and 578.
(viii) DL-Methionine, pages 641 and 642.
(ix) L-Methionine, pages 642 and 643.
(x) L-Tryptophan, pages 1060 and 1061.
(xi) L-Phenylalanine, pages 794 and 795.
(xii) L-Proline, pages 864 and 865.
(xiii) L-Serine, pages 915 and 916.

(xiv) L-Threonine, pages 1031 and 1032.
(xv) L-Glutamic Acid Hydrochloride, page 440.
(xvi) L-Isoleucine, pages 544 and 545.
(xvii) L-Lysine Monohydrochloride, pages 598 and 599.
(xviii) Monopotassium *L*-glutamate, pages 697 and 698.
(xix) L-Tyrosine, page 1061.
(xx) L-Valine, pages 1072.

(2) As found in ''Specifications and Criteria for Biochemical Compounds,'' NAS/NRC Publication, for the following:
(i) L-Asparagine
(ii) L-Aspartic acid
(iii) L-Glutamine
(iv) L-Histidine

(c) The additive(s) is used or intended for use to significantly improve the biological quality of the total protein in a food containing naturally occurring primarily intact protein that is considered a significant dietary protein source, provided that:

(1) A reasonable daily adult intake of the finished food furnishes at least 6.5 grams of naturally occurring primarily intact protein (based upon 10 percent of the daily allowance for the ''reference'' adult male recommended by the National Academy of Sciences in ''Recommended Dietary Allowances,'' NAS Publication No. 1694.

(2) The additive(s) results in a protein efficiency ratio (PER) of protein in the finished ready-to-eat food equivalent to casein as determined by the method specified in paragraph (d) of this section.

(3) Each amino acid (or combination of the minimum number necessary to achieve a statistically significant increase) added results in a statistically significant increase in the PER as determined by the method described in paragraph (d) of this section. The minimum amount of the amino acid(s) to achieve the desired effect must be used and the increase in PER over the primarily intact naturally occurring protein in the food must be substantiated as a statistically significant difference with at least a probability (P) value of less than 0.05.

(4) The amount of the additive added for nutritive purposes plus the amount naturally present in free and combined (as protein) form does not exceed the following levels of amino acids expressed as percent by weight of the total protein of the finished food:

| | Percent by weight of total protein (expressed as free amino acid) |
|---|---|
| L-Alanine | 6.1 |
| L-Arginine | 6.6 |
| L-Aspartic acid (including L-asparagine) | 7.0 |
| L-Cystine (including L-cysteine) | 2.3 |
| L-Glutamic acid (including L-glutamine) | 12.4 |
| Aminoacetic acid (glycine) | 3.5 |
| L-Histidine | 2.4 |
| L-Isoleucine | 6.6 |
| L-Leucine | 8.8 |
| L-Lysine | 6.4 |
| L- and DL-Methionine | 3.1 |
| L-Phenylalanine | 5.8 |
| L-Proline | 4.2 |
| L-Serine | 8.4 |
| L-Threonine | 5.0 |
| L-Tryptophan | 1.6 |
| L-Tyrosine | 4.3 |
| L-Valine | 7.4 |

(d) Compliance with the limitations concerning PER under paragraph (c) of this section shall be determined by the method described in sections 43.212–43.216, ''Official Methods of Analysis of the Association of Official Analytical Chemists.'' Each manufacturer or person employing the additive(s) under the provisions of this section shall keep and maintain throughout the period of his use of the additive(s) and for a minimum of 3 years thereafter, records of the tests required by this paragraph and other records required to assure effectiveness and compliance with this regulation and shall make such records available upon request at all reasonable hours by any officer or employee of the Food and Drug Administration, or any other officer or employee acting on behalf of the Secretary of Health and Human Services and shall permit such officer or employee to conduct such inventories of raw and finished materials on hand as he deems necessary and otherwise to check the correctness of such records.

(e) To assure safe use of the additive, the label and labeling of the additive and any premix thereof shall bear, in addition to the other information required by the Act, the following:

(1) The name of the amino acid(s) contained therein including the specific optical and chemical form.

(2) The amounts of each amino acid contained in any mixture.

(3) Adequate directions for use to provide a finished food meeting the limitations prescribed by paragraph (c) of this section.

(f) The food additive amino acids added as nutrients to special dietary foods that are intended for use solely under medical supervision to meet nutritional requirements in specific medical conditions and comply with the requirements of part 105 of this chapter are exempt from the limitations in paragraphs (c) and (d) of this section and may be used in such foods at levels not to exceed good manufacturing practices.

(g) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

(1) AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877:

(i) Sections 43.212–43.216, ''Official Methods of Analysis of the Association

of Official Analytical Chemists,'' 13th Ed. (1980).

(ii) [Reserved].

(2) National Academy of Sciences, available from the FDA Main Library, 10903 New Hampshire Ave., Silver Spring, MD 20993:

(i) ''Recommended Dietary Allowances,'' NAS Publication No. 1694, 7th Ed. (1968).

(ii) ''Specifications and Criteria for Biochemical Compounds,'' NAS/NRC Publication, 3rd Ed. (1972).

(3) United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*):

(i) Food Chemicals Codex, 7th ed. (2010), pages 28, 29, 69, 70, 71, 269, 270, 271, 440, 457, 458, 544, 545, 577, 578, 598, 599, 641, 642, 643, 697, 698, 794, 795, 864, 865, 915, 916, 1031, 1032, 1060, 1061, and 1072.

(ii) [Reserved].

■ 4. Amend § 172.345 by revising paragraph (b) to read as follows:

**§ 172.345 Folic acid (folacin).**

* * * * *

(b) Folic acid meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 406–407, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 5. Amend § 172.379 by revising paragraph (b) to read as follows:

**§ 172.379 Vitamin $D_2$.**

* * * * *

(b) Vitamin $D_2$ meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 1080–1081, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 6. Amend § 172.380 by revising paragraph (b) to read as follows:

**§ 172.380 Vitamin $D_3$.**

* * * * *

(b) Vitamin $D_3$ meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 1081–1082, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 7. Amend § 172.665 by revising paragraph (d)(2) to read as follows:

**§ 172.665 Gellan gum.**

* * * * *

(d) * * *

(2) Residual isopropyl alcohol (IPA) not to exceed 0.075 percent as determined by the procedure described in the ''Gellan gum'' monograph in the Food Chemicals Codex, 7th ed. (2010), pp. 425–426, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 8. Amend § 172.712 by revising paragraph (b) to read as follows:

**§ 172.712 1,3-Butylene glycol.**

* * * * *

(b) The food additive shall conform to the identity and specifications of the Food Chemicals Codex, 7th ed. (2010), p. 126, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 9. Amend § 172.736 by revising paragraph (b)(2) to read as follows:

**§ 172.736 Glycerides and polyglycides of hydrogenated vegetable oils.**

* * * * *

(b) * * *

(2) Acid value, not greater than 2, and hydroxyl value, not greater than 56, as determined by the methods entitled ''Acid Value,'' p. 1220 and ''Hydroxyl Value,'' p. 1223, respectively, in the Food Chemicals Codex, 7th ed. (2010), which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://*

*www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 10. Amend § 172.780 by revising paragraph (b) to read as follows:

**§ 172.780 Acacia (gum arabic).**

* * * * *

(b) The ingredient meets the specifications of the Food Chemicals Codex, 7th ed. (2010), p. 460, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 11. Amend § 172.800 by revising paragraph (b)(2) to read as follows:

**§ 172.800 Acesulfame potassium.**

* * * * *

(b) * * *

(2) Fluoride content is not more than 30 milligrams per kilogram, as determined by method III of the Fluoride Limit Test of the Food Chemicals Codex, 7th ed. (2010), p. 1151, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 12. Amend § 172.804 by revising paragraph (b) to read as follows:

**§ 172.804 Aspartame.**

* * * * *

(b) The additive meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 73–74, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 13. Revise the introductory text of § 172.810 to read as follows:

**§ 172.810 Dioctyl sodium sulfosuccinate.**

The food additive, dioctyl sodium sulfosuccinate, meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 313–314, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*). The food additive, dioctyl sodium sulfosuccinate, may be safely used in food in accordance with the following prescribed conditions:

* * * * *

■ 14. Amend § 172.812 by revising paragraph (a) to read as follows:

**§ 172.812 Glycine.**

* * * * *

(a) The additive meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 457–458, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 15. Amend § 172.831 by revising paragraph (b) to read as follows:

**§ 172.831 Sucralose.**

* * * * *

(b) The additive meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 993–995, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

* * * * *

■ 16. Amend § 172.841 by revising paragraph (b) to read as follows:

**§ 172.841 Polydextrose.**

* * * * *

(b) The additive meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 811–814, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National

Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 17. Amend § 172.862 by revising paragraph (b)(1) to read as follows:

**§ 172.862 Oleic acid derived from tall oil fatty acids.**

* * * * *

(b) * * *

(1) Specifications for oleic acid prescribed in the Food Chemicals Codex, 7th ed. (2010), pp. 743–744, which is incorporated by reference, except that titer (solidification point) shall not exceed 13.5 °C and unsaponifiable matter shall not exceed 0.5 percent. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 18. Amend § 172.867 by revising paragraph (b) to read as follows:

**§ 172.867 Olestra.**

* * * * *

(b) Olestra meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 744–746, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 19. Amend § 172.869 by revising paragraph (b) introductory text and paragraphs (b)(6) through (b)(11) to read as follows:

**§ 172.869 Sucrose oligoesters.**

* * * * *

(b) Sucrose oligoesters meet the specifications in the methods listed in the table in this paragraph. The methods for determining compliance with each specification are incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* Copies of the methods are available from the sources listed in the table in this paragraph:

| Specification | Limit | Method cited | Source for obtaining method |
|---|---|---|---|
| * | * | * | * |
| (6) Acid Value | Not more than 4.0 | ''Acid Value,'' Appendix VII, Method I (Commercial Fatty Acids), in the Food Chemicals Codex, 7th ed. (2010), p. 1220.. | United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*) |
| (7) Residue on Ignition | Not more than 0.7% | ''Residue on Ignition,'' Appendix IIC, Method I, in the Food Chemicals Codex, 7th ed. (2010), pp. 1141–1142 (using a 1-gram sample).. | Do. |
| (8) Residual Methanol | Not more than 10 milligrams/kilogram. | Method listed in the monograph for ''Sucrose Fatty Acid Esters'' in the Food Chemicals Codex, 7th ed. (2010), pp. 998–1000.. | Do |
| (9) Residual Dimethyl Sulfoxide. | Not more than 2.0 milligrams/kilogram. | .....do | Do. |
| (10) Residual Isobutyl Alcohol. | Not more than 10 milligrams/kilogram. | .....do | Do. |
| (11) Lead | Not more than 1.0 milligram/kilogram. | ''Atomic Absorption Spectrophometric Graphite Furnace Method,'' Method I in the Food Chemicals Codex, 7th ed. (2010), p. 1154–1155. | Do. |

* * * * *

## PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

■ 20. The authority citation for 21 CFR part 173 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348.

■ 21. Amend § 173.160 by revising paragraph (d) to read as follows:

### § 173.160 Candida guilliermondii.

* * * * *

(d) The additive is so used that the citric acid produced conforms to the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 226–227, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

■ 22. Amend § 173.165 by removing the first three sentences in paragraph (d) and adding five sentences in their place to read as follows:

### § 173.165 Candida lipolytica.

* * * * *

(d) The additive is so used that the citric acid produced conforms to the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 226–227, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* * * *

* * * * *

■ 23. Amend § 173.228 by revising paragraph (a) and removing footnote 1 to read as follows:

### § 173.228 Ethyl acetate.

* * * * *

(a) The additive meets the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 343–344, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 24. Amend § 173.280 by revising paragraph (c) to read as follows:

### § 173.280 Solvent extraction process for citric acid.

* * * * *

(c) The citric acid so produced meets the polynuclear aromatic hydrocarbon specifications of § 173.165 and the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 226–227, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 25. Amend § 173.310 in the table in paragraph (c) by revising the entries for ''Acrylic acid/2-acrylamido-2-methyl propane sulfonic acid copolymer'', ''Sodium carboxymethylcellulose'', and ''Sorbitol anhydride esters'' and add paragraph (f) to read as follows:

### § 173.310 Boiler water additives.

* * * * *

(c) List of substances:

| Substances | Limitations |
|---|---|
| * * * * | * * * |
| Acrylic acid/2-acrylamido-2-methyl propane sulfonic acid copolymer having a minimum weight average molecular weight of 9,900 and a minimum number average molecular weight of 5,700 as determined by a method entitled ''Determination of Weight Average and Number Average Molecular Weight of 60/40 AA/AMPS''. | Total not to exceed 20 parts per million (active) in boiler feedwater. |
| * * * * | * * * |
| Sodium carboxymethylcellulose | Contains not less than 95 percent sodium carboxymethylcellulose on a dry-weight basis, with maximum substitution of 0.9 carboxymethylcellulose groups per anhydroglucose unit, and with a minimum viscosity of 15 centipoises for 2 percent by weight aqueous solution at 25 °C; by the ''Viscosity of Cellulose Gum'' method prescribed in the Food Chemicals Codex, pp. 1128–1129. |

| Substances | Limitations |
|---|---|
| * * * * | * * * |
| Sorbitol anhydride esters: A mixture consisting of sorbitan monostearate as defined in § 172. 842 of this chapter; polysorbate 60 ((polyoxyethylene (20) sorbitan monostearate)) as defined in § 172.836 of this chapter; and polysorbate 20 ((polyoxyethylene (20) sorbitan monolaurate)), meeting the specifications of the Food Chemicals Codex, pp. 825–827.. | The mixture is used as an anticorrosive agent in steam boiler distribution systems, with each component not to exceed 15 milligrams per kilogram in the steam. |
| * * * * | * * * |

* * * * *

(f) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(1) FDA Main Library, 10903 New Hampshire Ave., Silver Spring, MD 20993:

(i) ''Determination of Weight Average and Number Average Molecular Weight of 60/40 AA/AMPS'' (October 23, 1987).

(ii) [Reserved].

(2) United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*):

(i) Food Chemicals Codex, 7th ed. (2010), pp. 1128–1129.

(ii) Food Chemicals Codex, 7th ed. (2010), pp. 825–827.

■ 26. Amend § 173.368 by revising paragraph (c) to read as follows:

**§ 173.368 Ozone.**

* * * * *

(c) The additive meets the specifications for ozone in the Food Chemicals Codex, 7th ed. (2010), pp. 754–755, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

■ 27. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

■ 28. Amend § 178.1005 by revising paragraph (c) to read as follows:

**§ 178.1005 Hydrogen peroxide solution.**

* * * * *

(c) *Specifications.* Hydrogen peroxide solution shall meet the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 496–497, which is incorporated by reference. Hydrogen peroxide solution shall also meet the specifications for ''Acidity,'' ''Chloride,'' and ''Other requirements'' for Hydrogen Peroxide Concentrate in the United States Pharmacopeia 36th Revision (2013), pp. 3848–3849, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address http://www.usp.org). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

## PART 180—FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY

■ 29. The authority citation for 21 CFR part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 343, 348, 371; 42 U.S.C. 241.

■ 30. Amend § 180.37 by revising paragraph (b) to read as follows:

**§ 180.37 Saccharin, ammonium saccharin, calcium saccharin, and sodium saccharin.**

* * * * *

(b) The food additives meet the specifications of the Food Chemicals Codex, 7th ed. (2010), pp. 52–54, 153–154, 898–899, 961–962, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

Dated: November 21, 2013.

**Susan M. Bernard,**

*Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.*

[FR Doc. 2013–28439 Filed 11–27–13; 8:45 am]

BILLING CODE 4160–01–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 31**

**[TD 9645]**

**RIN 1545–BK54**

## Rules Relating to Additional Medicare Tax

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to Additional Hospital Insurance Tax on income above threshold amounts (''Additional Medicare Tax''), as added by the Affordable Care Act. Specifically, these final regulations provide guidance for employers and individuals relating to the implementation of Additional Medicare Tax, including the requirement to withhold Additional Medicare Tax on certain wages and compensation, the requirement to file a return reporting Additional Medicare Tax, the employer process for adjusting underpayments and overpayments of Additional Medicare Tax, and the employer and individual processes for filing a claim for refund for an overpayment of Additional Medicare Tax.

**DATES:** *Effective date:* These regulations are effective on November 29, 2013.

*Applicability date:* For dates of applicability, see §§ 1.1401–1(e), 31.3101–2(d), 31.3102–1(f), 31.3102–4(d), 31.3202–1(h), 31.6011(a)–1(h), 31.6011(a)–2(e), 31.6205–1(e), 31.6402(a)–2(c), 31.6413(a)–1(c), and 31.6413(a)–2(e).

**FOR FURTHER INFORMATION CONTACT:** Andrew K. Holubeck at (202) 317–4774 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) under control number 1545–2097. The collection of information in these regulations is in §§ 31.6011(a)–1, 31.6011(a)–2, 31.6205–1, 31.6402(a)–2, 31.6413(a)–1, and 31.6413(a)–2. This information is required by the IRS to verify compliance with return requirements under section 6011, employment tax adjustments under sections 6205 and 6413, and claims for refund of overpayments under section 6402. This information will be used to determine whether the amount of tax has been reported and calculated correctly. The likely respondents are employers and individuals.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

These final regulations are issued in connection with the Additional Hospital Insurance Tax on income above threshold amounts (''Additional Medicare Tax''), as added by section 9015 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (124 Stat. 119 (2010)), and as amended by section 10906 of the PPACA and section 1402(b) of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the ''Affordable Care Act''). The final regulations include amendments to § 1.1401–1 of the Income Tax Regulations, and §§ 31.3101–2, 31.3102–1, 31.3102–4, 31.3202–1, 31.6011(a)–1, 31.6011(a)–2, 31.6205–1, 31.6402(a)–2, 31.6413(a)–1, and 31.6413(a)–2 of the Employment Tax Regulations. The final regulations provide guidance for employers and individuals relating to the implementation of Additional Medicare Tax, including the requirement to withhold Additional Medicare Tax on certain wages and compensation, the requirement to file a return reporting Additional Medicare Tax, the employer process for adjusting underpayments and overpayments of Additional Medicare Tax, and the employer and individual processes for filing a claim for refund of Additional Medicare Tax.

A notice of proposed rulemaking (REG–130074–11) was published in the **Federal Register** (77 FR 72268) on December 5, 2012. A public hearing was scheduled for April 4, 2013. The IRS did not receive any requests to testify at the public hearing, and therefore the public hearing was cancelled. Comments responding to the proposed regulations were received. All comments were considered and are available for public inspection and copying at *http://www.regulations.gov* or upon request. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The public comments and revisions are discussed in this preamble.

### Summary of Comments and Explanation of Revisions

The IRS received five comments in response to the proposed regulations. One commenter expressed concern that the 2013 Old Age, Survivors and Disability Insurance (OASDI) tax rate for employees of 6.2 percent was applied to wages for services performed in the last two weeks of 2012, when the OASDI tax rate for employees was 4.2 percent. This comment is outside the scope of these regulations.

Another commenter requested that the comment period for the proposed regulations be extended by 60 days. The Administrative Procedure Act does not set a time frame for a comment period on regulations. However, Executive Order (E.O.) 12866 provides that generally a comment period should be no less than 60 days. The public was given 90 days to comment on the proposed regulations, which exceeds the period required by E.O. 12866. The IRS received only five comments during the 90-day comment period, no comments were received after the 90-day comment period expired, and there is no indication that more comments would have been received if the comment period had been extended. Therefore, an extension of the comment period beyond the 90 days provided in the proposed regulations was not warranted.

One commenter noted that because Additional Medicare Tax will involve new recordkeeping and withholding procedures for employers and certain employees, there may be inadvertent errors involved with implementing the tax, especially in the first year of implementation. Therefore, the commenter requested that the IRS grant employers flexibility in correcting overpayments and underpayments of Additional Medicare Tax by allowing additional time to correct errors, allowing corrections for a certain period without penalty, and granting an exemption from penalties for de minimis errors.

No such changes were made in these final regulations. The regulations under §§ 31.6205–1(a) and 31.6413(a)–2 already allow employers flexibility in making interest-free adjustments of underpayments and overpayments and, to the extent an employer discovers an error in withholding, paying, or reporting Additional Medicare Tax, the regulations provide procedures for

correcting that error on an adjusted employer return generally without imposition of interest. Further, under sections 6651 and 6656, penalties for failure to pay or deposit Additional Medicare Tax do not apply to the extent the failure is due to reasonable cause and not willful neglect.

To correct an overpayment of income tax or Additional Medicare Tax, an employer may make an adjustment only if it repays or reimburses the employee prior to the end of the calendar year in which the wages or compensation was paid. Similarly, to correct an underpayment of income tax or Additional Medicare Tax, an employer may make an interest-free adjustment only if the error is ascertained within the calendar year in which the wages or compensation was paid. Because employees will report Additional Medicare Tax on Form 1040, ''U.S. Individual Tax Return,'' allowing employers time beyond the end of the calendar year in which the error was made to correct overpayments and underpayments would create complexity and confusion for individuals filing individual income tax returns and would adversely affect tax administration. Accordingly, these final regulations do not include additional procedures specifically for correcting Additional Medicare Tax errors, but rather generally rely on existing procedures for correcting income tax withholding errors.

One commenter questioned how employers should treat repayment by an employee of wage payments received by the employee in a prior year for Additional Medicare Tax purposes (for example, sign on bonuses paid to employees that are subject to repayment if certain conditions are not satisfied). Employers cannot make an adjustment or file a claim for refund for Additional Medicare Tax withholding when there is a repayment of wages received by an employee in a prior year because the employee determines liability for Additional Medicare Tax on the employee's income tax return for the prior year; however, the employee may be able to file an amended return claiming a refund of the Additional Medicare Tax.

More specifically, under current employment tax adjustment procedures, if the repayment occurs within the period of limitations for refund, the employer can repay or reimburse the social security and Medicare taxes withheld from the wage payment to the employee and file a refund claim, or make an interest-free adjustment, for the social security and Medicare tax overwithholding. However, under § 31.6413(a)–1(a)(2)(ii) of these regulations, an employer may adjust overpaid Additional Medicare Tax withheld from employees only in the calendar year in which the wages or compensation are paid, and only if the employer repays or reimburses the employee the amount of the overcollection prior to the end of the calendar year. Further, under § 31.6402(a)–2(a)(1)(iii) of these regulations, employers may claim a refund of overpaid Additional Medicare Tax only if the employer did not deduct or withhold the overpaid Additional Medicare Tax from the employee's wages or compensation. Accordingly, these regulations at § 31.6402(a)–2(b)(3)(ii) provide that, in the case of an overpayment of Additional Medicare Tax for a year for which an individual has filed Form 1040, a claim for refund should be made by the individual on Form 1040X, ''Amended U.S. Individual Income Tax Return.'' Since a wage repayment reduces the wages subject to Additional Medicare Tax for the period during which the wages were originally paid, the employee is entitled to file an amended return (on Form 1040X) to recover Additional Medicare Tax with respect to the repaid wages.[1]

Finally, one commenter expressed concern about the impact of the regulations on the small business and individual community. The commenter disagreed with the conclusion in the proposed regulations that no regulatory assessment was required under E.O. 12866 because the rulemaking is not a significant regulatory action. The commenter also disagreed with the conclusion in the proposed regulations that a regulatory flexibility analysis was not required under the Regulatory Flexibility Act (5 U.S.C. 601) (RFA) because the collection of information contained in the proposed regulations will not have a significant economic impact on a substantial number of small entities.

Section 3(a)(4)(B) of E.O. 12866 requires agencies to prepare a regulatory assessment for ''significant regulatory actions'' as defined in section 3(f) of E.O. 12866. As part of its definition of significant regulatory actions, section 3(f) includes economically significant regulations, that is, regulatory actions that are likely to have an annual effect on the economy of $100 million or more. The commenter contends that the skills equivalent to a junior associate accountant would be needed to comply with the regulations. The commentator contends that, assuming a junior associate reasonably bills for services at the rate of $100 per hour, and using the estimated annual reporting or recordkeeping burden for these regulations of 1,900,000 hours, the estimated annual effect on the economy is $190 million.

The Treasury Department and the IRS do not agree with the commenter's assertion that all individuals and entities subject to these regulations will require the services of an accountant. Many employers utilize payroll service providers that are equipped to comply with these regulations and that will include Additional Medicare Tax as part of the payroll services they provide. Other employers and individuals will be able to comply with these regulations without assistance by following the instructions that accompany tax forms and by utilizing other information provided by the IRS. Therefore, neither the proposed regulations, nor these final regulations, are significant regulatory actions within the meaning of E.O. 12866, and a regulatory assessment is not required.

The RFA requires agencies to prepare a regulatory flexibility analysis addressing the impact of proposed or final regulations on small entities. The proposed regulations certified that a regulatory flexibility analysis is not required because the collection of information contained in the regulations will not have a significant economic impact on a substantial number of small entities. The commenter challenged this certification.

A ''collection of information'' is defined in the RFA as a requirement that a small entity report information to the Federal Government, or maintain specified records, regardless of whether the information in those records is reported to the Federal Government. The regulations contain a collection of information requirement.

The RFA does not define ''substantial number.'' In general, for purposes of the RFA, regulations with a broad effect on

[1] In this situation, Additional Medicare Tax is treated differently than federal income tax. For federal income tax purposes, wages paid in a year are considered income to the employee in that year, even when the wages are repaid by the employee to the employer in a subsequent year. If an employee repays wages to an employer in a year following the year in which the wages were originally paid, the employee cannot reduce the federal income tax for the prior year (i.e., the employee cannot file an amended income tax return for the prior year using Form 1040X). Instead, depending on the circumstances, the employee may be entitled to a deduction for the repaid wages (or in some cases, if the requirements of section 1341 are satisfied, a reduction of tax) on his or her income tax return for the year of repayment. By contrast, the Additional Medicare Tax is part of FICA and, similar to social security tax and Medicare tax, the repayment of wages reduces the employee's liability for Additional Medicare Tax for the prior year.

business are presumed to have an impact on a substantial number of small entities. Since these regulations have a broad effect on business, these regulations will have an impact on a substantial number of small entities.

The RFA also does not define ''significant economic impact.'' As stated in connection with the discussion of E.O. 12866, the commenter assumed a billing rate of $100 per hour, and multiplied that rate by the estimated aggregate annual PRA reporting or recordkeeping burden for these regulations of 1,900,000 hours, to estimate the annual effect on the economy to be $190 million. Based on this calculation, the commenter concluded that the collection of information had a significant economic impact on a substantial number of small entities.

The commenter's approach is not an appropriate measure of the economic impact of these regulations on small entities. The 1,900,000 hours estimated to be the aggregate annual PRA burden for these regulations represents an estimated 1,900,000 respondents with an estimated average annual burden per respondent of 1 hour. The number of respondents comprises *all* respondents affected by these regulations, including individuals as well as entities. It is not an estimated number of affected entities only. The IRS estimates that approximately 325,000 entities report Medicare wages to one or more individuals in excess of the $200,000 Additional Medicare Tax withholding threshold. Thus, approximately 325,000 entities, encompassing both large and small entities, are affected by these regulations. Therefore, the reporting or recordkeeping burden of these regulations on small entities is estimated to be significantly less than 1,900,000 hours. The commenter's use of this number to assess the annual economic impact of these regulations on small entities is incorrect.

In addition, to the extent that there is a significant economic impact, the economic impact principally results directly from the underlying statutes. For example, the statute imposing Additional Medicare Tax requires the employer to withhold the tax from wages paid to the employee. Other provisions of the Internal Revenue Code (Code) require the employer to report and pay the correct amount of withheld tax to the government. Similarly, the collection of information required with regard to interest-free adjustments and claims for refund apply existing statutory rules to Additional Medicare Tax. The regulations implement the underlying statutes and provide guidance for employers and individuals relating to the requirement to file a return reporting Additional Medicare Tax, the employer process for making adjustments of underpayments and overpayments of Additional Medicare Tax, and the employer and individual processes for filing a claim for refund for an overpayment of Additional Medicare Tax. As a result, the estimated annual PRA burden per taxpayer for these regulations is very low. Consequently, the economic impact of these regulations is not expected to be significant, and neither the proposed regulations nor these final regulations will have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Therefore a regulatory flexibility analysis is not required.

The proposed regulations provided that if the employer deducts less than the correct amount of Additional Medicare Tax, it is nevertheless liable for the correct amount of tax that it was required to withhold, unless and until the employee pays the tax. Consistent with section 3102(f)(3) of the Code, the proposed regulations also provided that if an employee subsequently pays the tax that the employer failed to deduct, the tax will not be collected from the employer. These final regulations further provide that an employer is not relieved of its liability for payment of any Additional Medicare Tax required to be withheld unless it can show that the tax has been paid by the employee. Section 3102(f)(3) contains language similar to section 3402(d) of the Code, and this provision of the final regulations is consistent with the approach used in the regulations under section 3402(d). Employers will use Form 4669, ''Statement of Payments Received,'' and Form 4670, ''Request for Relief from Payment of Income Tax Withholding,'' the same forms used for requesting federal income tax withholding relief, to request relief from paying Additional Medicare Tax that has already been paid by the employee.

The final regulations also amend the proposed regulations to comply with formatting requirements of the Office of the Federal Register.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in E.O. 12866, and supplemented by E.O. 13653. The regulations implement the underlying statutes and the economic impact is principally a result of the underlying statutes, rather than the regulations. 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 regulations.

Sections 603 and 604 of the RFA (5 U.S.C. chapter 6) generally require agencies to prepare a regulatory flexibility analysis addressing the impact of proposed and final regulations, respectively, on small entities. Section 605(b) of the RFA, however, provides that sections 603 and 604 shall not apply if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the reasons discussed in the Summary of Comments section of the preamble, as well as the reasons set forth in the succeeding paragraphs, it is hereby certified that the collection of information requirements contained in these regulations will not have a significant economic impact on a substantial number of small entities.

The regulations under sections 6205, 6402, and 6413 affect all taxpayers that file employment tax returns or claims for refund of employment taxes. Many small entities fall into this category. Therefore, it has been determined that these regulations will affect a substantial number of small entities. It also has been determined, however, that the economic impact on entities affected by these regulations will not be significant.

As stated above, the regulations implement the underlying statutes and the economic impact is principally a result of the underlying statutes, rather than the regulations. The regulations require taxpayers that file employment tax returns and that make interest-free adjustments to the returns for underpayments or overpayments of Additional Medicare Tax, or that file claims for refund of an overpayment of Additional Medicare Tax, to provide an explanation setting forth the basis for the correction or the claim in detail, designating the return period in which the error was ascertained and the return period being corrected, and setting forth such other information as may be required by the instructions to the form. In addition, for adjustments of overpayments of Additional Medicare Tax, employers must obtain and retain the written receipt of the employee showing the date and amount of the repayment to the employee or retain evidence of reimbursement. The requirement to collect this information is not newly imposed by these regulations. The regulations merely apply procedures from existing regulations, with appropriate

modifications, to corrections of Additional Medicare Tax.

It is estimated that the annual PRA burden per taxpayer to comply with the collection of information requirements in these regulations is one hour. This minimal burden does not constitute a significant economic impact. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of the regulations is Andrew Holubeck of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1401–1 is amended by revising paragraph (b) and adding paragraphs (d) and (e) to read as follows:

**§ 1.1401–1 Tax on self-employment income.**

* * * * *

(b) The rates of tax on self-employment income are as follows (these regulations do not reflect off-Code revisions to the following rates):

(1) For Old-age, Survivors, and Disability Insurance:

| Taxable year | Percent |
|---|---|
| Beginning after December 31, 1983 and before January 1, 1988 | 11.40 |
| Beginning after December 31, 1987 and before January 1, 1990 | 12.12 |
| Beginning after December 31, 1989 | 12.40 |

(2)(i) For Hospital Insurance:

| Taxable year | Percent |
|---|---|
| Beginning after December 31, 1983 and before January 1, 1985 | 2.60 |
| Beginning after December 31, 1984 and before January 1, 1986 | 2.70 |
| Beginning after December 31, 1985 | 2.90 |

(ii) For Additional Medicare Tax:

| Taxable year | Percent |
|---|---|
| Beginning after December 31, 2012 | 0.9 |

* * * * *

(d) *Special rules regarding Additional Medicare Tax.* (1) *General rule.* An individual is liable for Additional Medicare Tax to the extent that his or her self-employment income exceeds the following threshold amounts.

| Filling status | Threshold |
|---|---|
| Married individual filing a joint return | $250,000 |
| Married individual filing a separate return | 125,000 |
| Any other case | 200,000 |

**Note:** These threshold amounts are specified under section 1401(b)(2)(A).

(2) *Coordination with Federal Insurance Contributions Act.* (i) *General rule.* Under section 1401(b)(2)(B), the applicable threshold specified under section 1401(b)(2)(A) is reduced (but not below zero) by the amount of wages (as defined in section 3121(a)) taken into account in determining Additional Medicare Tax under section 3101(b)(2) with respect to the taxpayer. This rule does not apply to Railroad Retirement Tax Act (RRTA) compensation (as defined in section 3231(e)).

(ii) *Examples.* The rules provided in paragraph (d)(2)(i) of this section are illustrated by the following examples:

*Example 1.* A, a single filer, has $130,000 in self-employment income and $0 in wages. A is not liable to pay Additional Medicare Tax.

*Example 2.* B, a single filer, has $220,000 in self-employment income and $0 in wages. B is liable to pay Additional Medicare Tax on $20,000 ($220,000 in self-employment income minus the threshold of $200,000).

*Example 3.* C, a single filer, has $145,000 in self-employment income and $130,000 in wages. C's wages are not in excess of $200,000 so C's employer did not withhold Additional Medicare Tax. However, the $130,000 of wages reduces the self-employment income threshold to $70,000 ($200,000 threshold minus the $130,000 of wages). C is liable to pay Additional Medicare Tax on $75,000 of self-employment income ($145,000 in self-employment income minus the reduced threshold of $70,000).

*Example 4.* E, who is married and files a joint return, has $140,000 in self-employment income. F, E's spouse, has $130,000 in wages. F's wages are not in excess of $200,000 so F's employer did not withhold Additional Medicare Tax. However, the $130,000 of F's wages reduces E's self-employment income threshold to $120,000 ($250,000 threshold minus the $130,000 of wages). E and F are liable to pay Additional Medicare Tax on $20,000 of E's self-employment income ($140,000 in self-employment income minus the reduced threshold of $120,000).

*Example 5.* D, who is married and files married filing separately, has $150,000 in self-employment income and $200,000 in wages. D's wages are not in excess of $200,000 so D's employer did not withhold Additional Medicare Tax. However, the $200,000 of wages reduces the self-employment income threshold to $0 ($125,000 threshold minus the $200,000 of wages). D is liable to pay Additional Medicare Tax on $75,000 of wages ($200,000 in wages minus the $125,000 threshold for a married filing separately return) and on $150,000 of self-employment income ($150,000 in self-employment income minus the reduced threshold of $0).

(e) *Effective/applicability date.* Paragraphs (b) and (d) of this section apply to quarters beginning on or after November 29, 2013.

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

■ **Par. 3.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 4.** Revise § 31.3101–2 to read as follows:

**§ 31.3101–2 Rates and computation of employee tax.**

(a) *Old-Age, Survivors, and Disability Insurance.* The rates of employee tax for Old-Age, Survivors, and Disability Insurance (OASDI) with respect to wages received in calendar years after 1983 are as follows (these regulations do not reflect off-Code revisions to the following rates):

| Calendar year | Percent |
|---|---|
| 1984, 1985, 1986, or 1987 | 5.7 |
| 1988 or 1989 | 6.06 |
| 1990 and subsequent years | 6.2 |

(b)(1) *Hospital Insurance.* The rates of employee tax for Hospital Insurance (HI) with respect to wages received in calendar years after 1973 are as follows:

| Calendar year | Percent |
|---|---|
| 1974, 1975, 1976, or 1977 | 0.90 |
| 1978 | 1.00 |
| 1979 or 1980 | 1.05 |
| 1981, 1982, 1983, or 1984 | 1.30 |
| 1985 | 1.35 |
| 1986 and subsequent years | 1.45 |

(2) *Additional Medicare Tax.* (i) The rate of Additional Medicare Tax with respect to wages received in taxable years beginning after December 31, 2012, is as follows:

| Taxable year | Percent |
|---|---|
| Beginning after December 31, 2012 | 0.9 |

(ii) Individuals are liable for Additional Medicare Tax with respect to wages received in taxable years beginning after December 31, 2012, which are in excess of:

| Filling status | Threshold |
|---|---|
| Married individual filing a joint return | $250,000 |
| Married individual filing a separate return | 125,000 |
| Any other case | 200,000 |

(c) *Computation of employee tax.* The employee tax is computed by applying to the wages received by the employee the rates in effect at the time such wages are received.

*Example.* In 1989, A performed services for X which constituted employment (see § 31.3121(b)–2). In 1990 A receives from X $1,000 as remuneration for such services. The tax is payable at the 6.2 percent OASDI rate and the 1.45 percent HI rate in effect for the calendar year 1990 (the year in which the wages are received) and not at the 6.06 percent OASDI rate and the 1.45 percent HI rate which were in effect for the calendar year 1989 (the year in which the services were performed).

(d) *Effective/applicability date.* Paragraphs (a) (b), and (c) of this section apply to quarters beginning on or after November 29, 2013. Taxpayers may rely on the rules contained in the proposed regulations for quarters beginning before November 29, 2013.

**Par. 5.** Section 31.3102–1 is amended by adding a sentence at the end of paragraph (a) and adding paragraph (f) to read as follows:

**§ 31.3102–1 Collection of, and liability for, employee tax; in general.**

(a) * * * For special rules relating to Additional Medicare Tax imposed under section 3101(b)(2), see § 31.3102–4.

* * * * *

(f) *Effective/applicability date.* Paragraph (a) of this section applies to quarters beginning on or after November 29, 2013.

**Par. 6.** Section 31.3102–4 is added to read as follows:

**§ 31.3102–4 Special rules regarding Additional Medicare Tax.**

(a) *Collection of tax from employee.* An employer is required to collect from each of its employees the tax imposed by section 3101(b)(2) (Additional Medicare Tax) with respect to wages for employment performed for the employer by the employee only to the extent the employer pays wages to the employee in excess of $200,000 in a calendar year. This rule applies regardless of the employee's filing status or other income. Thus, the employer disregards any amount of wages or Railroad Retirement Tax Act (RRTA) compensation paid to the employee's spouse. The employer also disregards any RRTA compensation paid by the employer to the employee or any wages or RRTA compensation paid to the employee by another employer.

*Example.* H, who is married and files a joint return, receives $100,000 in wages from his employer for the calendar year. I, H's spouse, receives $300,000 in wages from her employer for the same calendar year. H's wages are not in excess of $200,000, so H's employer does not withhold Additional Medicare Tax. I's employer is required to collect Additional Medicare Tax only with respect to wages it pays which are in excess of the $200,000 threshold (that is, $100,000) for the calendar year.

(b) *Collection of amounts not withheld.* To the extent the employer does not collect Additional Medicare Tax imposed on the employee by section 3101(b)(2), the employee is liable to pay the tax.

*Example.* J, who is married and files a joint return, receives $190,000 in wages from his employer for the calendar year. K, J's spouse, receives $150,000 in wages from her employer for the same calendar year. Neither J's nor K's wages are in excess of $200,000, so neither J's nor K's employers are required to withhold Additional Medicare Tax. J and K are liable to pay Additional Medicare Tax on $90,000 ($340,000 minus the $250,000 threshold for a joint return).

(c) *Employer's liability for tax.* If the employer deducts less than the correct amount of Additional Medicare Tax, or if it fails to deduct any part of Additional Medicare Tax, it is nevertheless liable for the correct amount of tax that it was required to withhold, unless and until the employee pays the tax. If an employee subsequently pays the tax that the employer failed to deduct, the tax will not be collected from the employer. The employer will not be relieved of its liability for payment of the tax required to be withheld unless it can show that the tax under section 3101(b)(2) has been paid. The employer, however, will remain subject to any applicable penalties or additions to tax resulting from the failure to withhold as required.

(d) *Effective/applicability date.* This section applies to quarters beginning on or after November 29, 2013.

**Par. 7.** Section 31.3202–1 is amended by adding paragraphs (g) and (h) to read as follows:

**§ 31.3202–1 Collection of, and liability for, employee tax.**

* * * * *

(g) *Special rules regarding Additional Medicare Tax.* (1) An employer is required to collect from each of its employees the portion of the tax imposed by section 3201(a) (as calculated under section 3101(b)(2)) (Additional Medicare Tax) with respect to compensation for employment performed for the employer by the employee only to the extent the employer pays compensation to the employee in excess of $200,000 in a calendar year. This rule applies regardless of the employee's filing status or other income. Thus, the employer disregards any amount of compensation or Federal Insurance Contributions Act (FICA) wages paid to the employee's spouse. The employer also disregards any FICA wages paid by the employer to the employee or any compensation or FICA wages paid to the employee by another employer.

*Example.* A, who is married and files a joint return, receives $100,000 in compensation from her employer for the calendar year. B, A's spouse, receives $300,000 in compensation from his employer for the same calendar year. A's compensation is not in excess of $200,000, so A's employer does not withhold Additional Medicare Tax. B's employer is required to collect Additional Medicare Tax only with respect to compensation it pays to B that is in excess of the $200,000 threshold (that is, $100,000) for the calendar year.

(2) To the extent the employer does not collect Additional Medicare Tax imposed on the employee by section 3201(a) (as calculated under section 3101(b)(2)), the employee is liable to pay the tax.

*Example.* C, who is married and files a joint return, receives $190,000 in compensation from her employer for the calendar year. D, C's spouse, receives $150,000 in compensation from his employer for the same calendar year. Neither C's nor D's compensation is in excess of $200,000, so neither C's nor D's employers are required to withhold Additional Medicare Tax. C and D are liable to pay Additional Medicare Tax on $90,000 ($340,000 minus the $250,000 threshold for a joint return).

(3) If the employer deducts less than the correct amount of Additional Medicare Tax, or if it fails to deduct any part of Additional Medicare Tax, it is nevertheless liable for the correct amount of tax that it was required to withhold, unless and until the employee pays the tax. If an employee subsequently pays the tax that the employer failed to deduct, the tax will not be collected from the employer. The employer will not be relieved of its liability for payment of the tax required to be withheld unless it can show that the tax under section 3201(a) (as calculated under section 3101(b)(2)) has been paid. The employer, however, will remain subject to any applicable penalties or additions to tax resulting from the failure to withhold as required.

(h) *Effective/applicability date.* Paragraph (g) of this section applies to quarters beginning on or after November 29, 2013.

■ **Par. 8.** Section 31.6011(a)–1 is amended by:

■ 1. Designating paragraph (g) as paragraph (h) and adding a sentence to the end.

■ 2. Adding new paragraph (g).

The additions read as follows:

**§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.**

* * * * *

(g) *Returns by employees in respect of Additional Medicare Tax.* An employee who is paid wages, as defined in sections 3121(a), subject to the tax under section 3101(b)(2) (Additional Medicare Tax), must make a return for the taxable year in respect of such tax. The return shall be made on Form 1040, ''U.S. Individual Income Tax Return.'' The form to be used by residents of the U.S. Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands is Form 1040–SS, ''U.S. Self-Employment Tax Return (Including Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).'' The form to be used by residents of Puerto Rico is either Form 1040–SS or Form 1040–PR, ''Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).''

(h) * * * Paragraph (g) of this section applies to taxable years beginning on or after November 29, 2013.

■ **Par. 9.** Section 31.6011(a)–2 is amended by adding paragraphs (d) and (e) to read as follows:

**§ 31.6011(a)–2 Returns under Railroad Retirement Tax Act.**

* * * * *

(d) *Returns by employees and employee representatives in respect of Additional Medicare Tax.* An employee or employee representative who is paid compensation, as defined in section 3231(e), subject to the tax under sections 3201(a) (as calculated under section 3101(b)(2)) or section 3211(a) (as calculated under section 3101(b)(2)) (Additional Medicare Tax), must make a return for the taxable year in respect of such tax. The return shall be made on Form 1040, ''U.S. Individual Income Tax Return.'' The form to be used by residents of the U.S. Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands is Form 1040–SS, ''U.S. Self-Employment Tax Return (Including Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).'' The form to be used by residents of Puerto Rico is either Form 1040–SS or Form 1040–PR, ''Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).''

(e) *Effective/applicability date.* Paragraph (d) of this section applies to taxable years beginning on or after November 29, 2013.

■ **Par. 10.** Section 31.6205–1 is amended by:

■ 1. Revising the first sentence in paragraph (b)(2)(i).

■ 2. Adding a sentence after the first sentence in paragraphs (b)(2)(ii) and (iii).

■ 3. Adding two sentences after the sixth sentence in paragraph (b)(3).

■ 4. Adding paragraphs (b)(4) and (e).

■ 5. Revising paragraph (d)(1).

The revisions and additions read as follows:

**§ 31.6205–1 Adjustments of underpayments.**

* * * * *

(b) * * *

(2) * * * (i) If an employer files a return on which FICA tax or RRTA tax is required to be reported, and reports on the return less than the correct amount of employee or employer FICA or RRTA tax with respect to a payment of wages or compensation, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section, except as provided in paragraph (b)(4) of this section for Additional Medicare Tax. * * *

(ii) * * * However, if the employer also reported less than the correct amount of Additional Medicare Tax, the employer shall correct the underwithheld and underpaid Additional Medicare Tax in accordance with paragraph (b)(4) of this section. * * *

(iii) * * * However, if the employer also reported less than the correct amount of Additional Medicare Tax, the employer shall correct the underwithheld and underpaid Additional Medicare Tax in accordance with paragraph (b)(4) of this section. * * *

(3) * * * However, an adjustment of Additional Medicare Tax required to be withheld under section 3101(b)(2) or section 3201(a) may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages or compensation were paid to the employee, or if section 3509 applies to determine the amount of the underpayment, or if the adjustment is reported on a Form 2504 or Form 2504–WC. See paragraph (b)(4) of this section. * * *

(4) *Additional Medicare Tax.* If an employer files a return on which FICA tax or RRTA tax is required to be reported, and reports on the return less than the correct amount of Additional Medicare Tax required to be withheld with respect to a payment of wages or compensation, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. An adjustment of Additional Medicare Tax may only be reported pursuant to this paragraph (b)(4) if the error is ascertained within the same calendar year that the wages or compensation were paid to the employee, unless the underpayment is attributable to an administrative error (that is, an error involving the inaccurate reporting of the amount actually withheld), section 3509 applies to determine the amount of the underpayment, or the adjustment is reported on a Form 2504 or Form 2504–WC. The employer shall adjust the underpayment of Additional Medicare Tax by reporting the additional amount due on an adjusted return for the return period in which the wages or compensation were paid, accompanied by a detailed explanation of the amount

being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed within the period of limitations for assessment for the return period being corrected, and by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

* * * * *

(d) * * *

(1) * * * If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, the employer must collect the amount of the undercollection by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. If an employer collects less than the correct amount of Additional Medicare Tax required to be withheld under section 3101(b)(2) or section 3201(a), the employer must collect the amount of the undercollection on or before the last day of the calendar year by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages or compensation. The correct amount of employee tax must be reported and paid, as provided in paragraph (b) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(1), and even if the deduction is made after the return on which the employee tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If an employer makes an erroneous collection of employee tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of employee tax from one employee may not be used to offset an undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see §§ 31.3102–1(d), 31.3102–4(c), and 31.3202–1. This paragraph (d)(1) does not apply if section 3509 applies to determine the employer's liability.

* * * * *

(e) *Effective/applicability date.* Paragraphs (b) and (d) of this section apply to adjusted returns filed on or after November 29, 2013.

■ **Par. 11.** Section 31.6402(a)–2 is amended by:

■ 1. Revising paragraph (a)(1)(i) and the first sentence in paragraph (a)(1)(ii).

■ 2. Redesignating paragraphs (a)(1)(iii) through (vi), as paragraphs (a)(1)(iv) through (vii), respectively.

■ 3. Revising newly-redesignated paragraphs (a)(1)(iv) and (a)(1)(v).

■ 4. Adding new paragraph (a)(1)(iii).

■ 5. Revising paragraph (b).

■ 6. Adding paragraph (c).

The revisions and additions read as follows:

**§ 31.6402(a)–2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.**

(a) * * *

(1) * * *

(i) Except as provided in paragraph (a)(1)(iii) of this section, any person may file a claim for credit or refund for an overpayment (except to the extent that the overpayment must be credited pursuant to § 31.3503–1) if the person paid to the Internal Revenue Service (IRS) more than the correct amount of employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax Act (RRTA) tax under section 3201, employee representative RRTA tax under section 3211, or employer RRTA tax under section 3221, or interest, addition to the tax, additional amount, or penalty with respect to any such tax.

(ii) Except as provided in paragraph (a)(1)(iii) of this section, the claim for credit or refund must be made in the manner and subject to the conditions stated in this section. * * *

(iii) *Additional Medicare Tax.* No refund or credit to the employer will be allowed for the amount of any overpayment of Additional Medicare Tax imposed under section 3101(b)(2) or section 3201(a) (as calculated under section 3101(b)(2)), which the employer deducted or withheld from an employee.

(iv) For adjustments without interest of overpayments of FICA or RRTA taxes, including Additional Medicare Tax, see § 31.6413(a)–2.

(v) For corrections of FICA and RRTA tax paid under the wrong chapter, see § 31.6205–1(b)(2)(ii) and (b)(2)(iii) and § 31.3503–1.

* * * * *

(b) *Claim by employee*—(1) *In general.* Except as provided in (b)(3) of this section, if more than the correct amount of employee tax under section 3101 or section 3201 is collected by an employer from an employee and paid to the IRS, the employee may file a claim for refund of the overpayment if—

(i) The employee does not receive repayment or reimbursement in any manner from the employer and does not authorize the employer to file a claim and receive refund or credit,

(ii) The overcollection cannot be corrected under § 31.3503–1, and

(iii) In the case of overpaid employee social security tax due to having received wages or compensation from multiple employers, the employee has not taken the overcollection into account in claiming a credit against, or refund of, his or her income tax, or if so, such claim has been rejected. See § 31.6413(c)–1.

(2) *Statements supporting employee's claim.* (i) Except as provided in (b)(3) of this section, each employee who makes a claim under paragraph (b)(1) of this section shall submit with such claim a statement setting forth (a) the extent, if any, to which the employer has repaid or reimbursed the employee in any manner for the overcollection, and (b) the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employee tax paid by such employer to the IRS. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his or her knowledge and belief, and shall include therein an explanation of his or her inability to obtain the statement from the employer.

(ii) Except as provided in paragraph (b)(3) of this section, each individual who makes a claim under paragraph (b)(1) of this section also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his or her income tax, and the amount, if any, so claimed (see § 31.6413(c)–1).

(3) *Additional Medicare Tax.* (i) If more than the correct amount of Additional Medicare Tax under section 3101(b)(2) or section 3201(a) (as calculated under section 3101(b)(2)), is collected by an employer from an employee and paid to the IRS, the employee may file a claim for refund of the overpayment and receive a refund or credit if the overcollection cannot be corrected under § 31.3503–1 and if the employee has not received repayment or reimbursement from the employer in the context of an interest-free adjustment. The claim for refund shall be made on Form 1040, ''U.S. Individual Income Tax Return,'' by taking the overcollection into account in claiming a credit against, or refund of, tax. The form to be used by residents of the U.S. Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands is Form 1040–SS, ''U.S. Self-Employment Tax Return (Including Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).'' The form to be used by residents of Puerto Rico is either Form 1040–SS or Form 1040–PR, ''Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).'' The employee may not authorize the employer to claim the credit or refund for the employee. See § 31.6402(a)–2(a)(1)(iii).

(ii) In the case of an overpayment of Additional Medicare Tax under section 3101(b)(2) or section 3201(a) for a taxable year of an individual for which a Form 1040 (or other applicable return in the Form 1040 series) has been filed, a claim for refund shall be made by the individual on Form 1040X, ''Amended U.S. Individual Income Tax Return.''

(c) *Effective/applicability date.* This section applies to claims for refund filed on or after November 29, 2013.

■ **Par. 12.** Section 31.6413(a)–1 is amended by:

■ 1. Revising the first sentence in paragraph (a)(2)(i).

■ 2. Redesignating paragraphs (a)(2)(ii) through (vii) as paragraphs (a)(2)(iii) through (viii), respectively.

■ 3. Revising newly-designated paragraph (a)(2)(viii).

■ 3. Adding paragraph (a)(2)(ii).

■ 4. Adding a sentence after the first sentence in newly-redesignated paragraph (a)(2)(iv).

■ 5. Adding a sentence at the end of newly-redesignated paragraph (a)(2)(v).

■ 6. Adding paragraph (c).

The revisions and additions read as follows:

**§ 31.6413(a)–1 Repayment or reimbursement by employer of tax erroneously collected from employee.**

(a) * * *

(2) * * * (i) Except as provided in paragraph (a)(2)(ii) of this section, if an employer files a return for a return period on which FICA tax or RRTA tax is reported, collects from an employee and pays to the IRS more than the correct amount of the employee FICA or RRTA tax, and if the employer ascertains the error after filing the return and within the applicable period of limitations on credit or refund, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the expiration of such limitations period. * * *

(ii) If an employer files a return for a return period on which Additional Medicare Tax under section 3101(b)(2) or section 3201(a) is reported, collects from an employee and pays to the IRS more than the correct amount of Additional Medicare Tax required to be withheld from wages or compensation, and if the employer ascertains the error after filing the return but before the end of the calendar year in which the wages or compensation were paid, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the end of the calendar year. However, this paragraph does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee.

* * * * *

(iv) * * * However, for purposes of overcollected Additional Medicare Tax under section 3101(b)(2) or section 3201(a), the employer shall reimburse the employee by applying the amount of the overcollection against the employee FICA or RRTA tax which attaches to wages or compensation paid by the employer to the employee in the calendar year in which the overcollection is made. * * *

(v) * * * This paragraph (a)(2)(v) does not apply for purposes of overcollected Additional Medicare Tax under section 3101(b)(2) or section 3201(a) which must be repaid or reimbursed to the employee in the calendar year in which the overcollection is made.

* * * * *

(viii) For corrections of FICA and RRTA tax paid under the wrong chapter, see § 31.6205–1(b)(2)(ii) and (iii) and § 31.3503–1.

* * * * *

(c) *Effective/applicability date.* Paragraph (a) of this section applies to adjusted returns filed on or after November 29, 2013.

■ **Par. 13.** Section 31.6413(a)–2 is amended by:

■ 1. Adding a sentence after the first sentence in paragraph (a)(1).

■ 2. Adding a sentence after the second sentence in paragraph (b)(2)(i).

■ 3. Adding paragraph (e).

The additions read as follows:

**§ 31.6413(a)–2 Adjustments of overpayments.**

(a) * * *

(1) * * * However, this section only applies to overcollected or overpaid Additional Medicare Tax under section 3101(b)(2) or section 3201(a) if the employer has repaid or reimbursed the amount of the overcollection of such tax to the employee in the year in which the overcollection was made. * * *

* * * * *

(b) * * *

(2) * * *

(i) * * * However, for purposes of Additional Medicare Tax under section 3101(b)(2) or section 3201(a), if the amount of the overcollection is not repaid or reimbursed to the employee under § 31.6413(a)–1(a)(2)(ii), there is no overpayment to be adjusted under this section and the employer may only adjust an overpayment of such tax attributable to an administrative error, that is, an error involving the inaccurate reporting of the amount withheld, pursuant to this section. * * *

* * * * *

(e) *Effective/applicability date.* Paragraphs (a) and (b) of this section apply to adjusted returns filed on or after November 29, 2013. Taxpayers may rely on the rules contained in the proposed regulations for adjusted returns filed before November 29, 2013.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 18, 2013.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury.*

[FR Doc. 2013–28411 Filed 11–26–13; 4:15 pm]

BILLING CODE 4830–01–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 31**

**[TD 9646]**

**RIN 1545–BL93**

## Authority for Voluntary Withholding on Other Payments

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations under the Internal Revenue Code (Code) relating to voluntary withholding agreements. The regulations allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. These temporary regulations affect persons making and persons receiving payments for which the IRS issues subsequent guidance authorizing the parties to enter into voluntary withholding agreements.

**DATES:** *Effective Date:* These regulations are effective on November 27, 2013.

*Applicability date:* For date of applicability, see § 31.3402(p)–1T(d).

**FOR FURTHER INFORMATION CONTACT:** Linda L. Conway-Hataloski at (202) 317–6798 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 3402(p) allows for voluntary income tax withholding agreements. Section 3402(p)(3) authorizes the Secretary to provide regulations for withholding from (A) remuneration for services performed by an employee for the employee's employer which does not constitute wages, and (B) from any other payment with respect to which the Secretary finds that withholding would be appropriate, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Section 3402(p)(3) also authorizes the Secretary to prescribe in regulations the form and manner of such agreement. Section 31.3402(p)–1 of the Employment Tax Regulations describes how an employer and an employee may enter into an income tax withholding agreement under section 3402(p) for amounts that are excepted from the definition of wages in section 3401(a).

### Explanation of Provisions

These temporary regulations under section 31.3402(p)–1T allow the Secretary to describe other payments subject to voluntary withholding agreements in guidance to be published in the Internal Revenue Bulletin (IRB). The temporary regulations also provide that the IRB guidance will set forth requirements regarding the form and duration of the voluntary withholding agreement specific to the type of payment from which withholding is authorized.

Expanding the use of voluntary withholding agreements to payments designated by the Secretary as eligible for voluntary withholding will permit taxpayers to use the withholding regime (rather than the estimated tax payment process) to meet their tax payment obligations on a timely basis, minimize the risk of underpayment of taxes, and achieve administrative simplification for taxpayers and the IRS.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the cross-reference notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these regulations is Linda L. Conway-Hataloski, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 31 is amended as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** § 31.3402(p)–1T is added to read as follows:

**§ 31.3402(p)–1T Voluntary Withholding Agreements (temporary).**

(a)–(b) [Reserved] For further guidance, see § 31.3402(p)–1(a) and (b).

(c) *Other payments.* The Secretary may issue guidance by publication in the Internal Revenue Bulletin (IRB) (which will be available at *www.IRS.gov*) describing other payments for which withholding under a voluntary withholding agreement would be appropriate and authorizing payors to agree to withhold income tax on such payments if requested by the payee. Requirements regarding the form and duration of voluntary withholding agreements authorized by this paragraph (c) will be provided in the IRB guidance issued regarding specific types of payments.

(d) *Effective/applicability date.* (1) This section applies on and after November 27, 2013.

(2) The applicability of this section expires on November 25, 2016.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 21, 2013.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2013–28526 Filed 11–27–13; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 57 and 602**

**[TD 9643]**

**RIN 1545–BL20**

## Health Insurance Providers Fee

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the annual fee

imposed on covered entities engaged in the business of providing health insurance for United States health risks. This fee is imposed by section 9010 of the Patient Protection and Affordable Care Act, as amended. The regulations affect persons engaged in the business of providing health insurance for United States health risks.

**DATES:** *Effective date:* These regulations are effective on November 29, 2013.

*Applicability date:* For dates of applicability see §§ 57.10 and 57.6302–1.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Langley, Jr. at (202) 317–6855 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget under control number 1545–2249. The collection of information in these final regulations is in § 57.2(e)(2)(i). The information is required to be maintained, in the case of a controlled group, by the designated entity and each member of the controlled group. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

## Background

This document adds the Health Insurance Providers Fee Regulations to the Code of Federal Regulations (26 CFR Part 57) under section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA). All references in this preamble to section 9010 are references to the ACA. Section 9010 did not amend the Internal Revenue Code (Code) but contains cross-references to specified Code sections.

A notice of proposed rulemaking (REG–118315–12, 78 FR 14034) was published in the **Federal Register** on March 4, 2013 (the proposed regulations). The Department of the Treasury (Treasury Department) and the IRS received over 80 written comments from the public in response to the proposed regulations. A public hearing was held on June 21, 2013. After considering the public written comments and hearing testimony, the proposed regulations are adopted as final regulations by this Treasury decision with certain changes as described in this preamble.

Unless otherwise indicated, all other references to subtitles, chapters, subchapters, and sections in this preamble are references to subtitles, chapters, subchapters, and sections in the Code and related regulations. All references to ''fee'' in the final regulations are references to the fee imposed by section 9010.

## Explanation of Provisions and Summary of Comments

### Covered Entities and Exclusions

*In General*

Section 9010(a) imposes an annual fee, beginning in 2014, on each covered entity engaged in the business of providing health insurance. Section 9010(c) provides that a covered entity is any entity that provides health insurance for any United States health risk during each year, subject to certain exclusions. The proposed regulations defined the term *covered entity* generally to mean any entity with net premiums written for United States health risks during the fee year that is: (1) a health insurance issuer within the meaning of section 9832(b)(2); (2) a health maintenance organization within the meaning of section 9832(b)(3); (3) an insurance company subject to tax under part I or II of subchapter L, or that would be subject to tax under part I or II of subchapter L but for the entity being exempt from tax under section 501(a); (4) an entity that provides health insurance under Medicare Advantage, Medicare Part D, or Medicaid; or (5) a non-fully insured multiple employer welfare arrangement (MEWA).

With respect to the first category of covered entity, the proposed regulations provided that a health insurance issuer within the meaning of section 9832(b)(2) means an insurance company, insurance service, or insurance organization that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance. A commenter suggested that the final regulations eliminate any State licensing requirement for a covered entity because an entity may provide health insurance for a United States health risk and not be licensed. The final regulations do not adopt this suggestion. The final regulations modify this category of covered entity to more closely align with section 9832(b)(2), which provides that a health insurance issuer must be licensed to engage in the business of insurance in a State and not merely required to be licensed as stated in the proposed regulations. A health insurance issuer within the meaning of section 9832(b)(2) cannot lawfully engage in the business of selling insurance in a State unless it is licensed to engage in the business of insurance in that State.

Notwithstanding this licensing limitation for the first category of covered entity, the term *covered entity* is not limited to an entity that is a health insurance issuer within the meaning of section 9832(b)(2). An insurance company subject to tax under subchapter L, an entity providing health insurance under Medicare Advantage, Medicare Part D, or Medicaid, or a MEWA may also be a covered entity under these regulations, whether or not that entity is licensed to engage in the business of insurance in a State.

*Multiple Employer Welfare Arrangements (MEWAs)*

The proposed regulations provided that the term *covered entity* includes a MEWA within the meaning of section 3(40) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. chapter 18) (ERISA), to the extent that the MEWA is not a fully-insured MEWA, regardless of whether the MEWA is subject to regulation under State insurance law. In the case of a fully-insured MEWA, the MEWA is not a covered entity because, even though the MEWA receives premiums, it applies those premiums to pay an insurance company to provide the coverage it purchases. If the MEWA is not fully insured, however, the MEWA is a covered entity to the extent that it uses the premiums it receives to provide the health coverage rather than to pay an insurance company to provide the coverage.

Commenters suggested that a MEWA not be treated as a covered entity, stating that Federal and State law do not support the interpretation that a MEWA offers ''insurance.'' Commenters also stated that an employer who participates in a non-fully insured MEWA should be treated the same as an employer who offers a self-insured plan. The final regulations do not adopt these suggestions. By participating in a non-fully insured MEWA, a participating employer generally is pooling its health insurance risks, transferring those risks to the MEWA, or both, similar to the

way an employer pools and transfers those risks by purchasing a group insurance policy from an insurance company. In a non-fully insured MEWA, the responsibility for a claim that a participant makes against it lies with the MEWA, and possibly with all of the contributing employers. Therefore, a MEWA is different from a self-insured plan in which responsibility for a participant's claim lies solely with the claimant's employer.

Moreover, section 514(b)(6) of ERISA provides that a MEWA is subject to State insurance law and regulation as an insurance provider, unlike non-MEWA ERISA-covered employee benefit plans which are not subject to State insurance law and regulation due to Federal preemption. For example, a non-fully insured multiemployer plan, defined under section 3(37) of ERISA, generally would not be subject to State insurance law, whereas an ERISA-covered MEWA, within the meaning of section 3(40) of ERISA, that is not fully insured (as defined in section 514(b)(6)(D) of ERISA) generally would be subject to State insurance law.

The Joint Committee on Taxation General Explanation also indicates that a MEWA is intended to be a covered entity under section 9010: ''A covered entity does not include an organization that qualifies as a VEBA [voluntary employees' beneficiary association] under section 501(c)(9) that is established by an entity other than the employer (i.e., a union) for the purpose of providing health care benefits. This exclusion does not apply to multi-employer [sic] welfare arrangements ('MEWAs').'' See General Explanation of Tax Legislation Enacted by the 111th Congress, JCS–2–11 (March 2011) (JCT General Explanation) at 330.

For these reasons, the Treasury Department and the IRS have concluded that a MEWA within the meaning of section 3(40) of ERISA is an entity that provides health insurance for purposes of section 9010 to the extent that the MEWA is not a fully-insured MEWA and regardless of whether the MEWA is subject to regulation under State insurance law. In addition, such a MEWA is not eligible for the exception from the fee under section 9010(c)(2)(A) for self-insured employers.

The proposed regulations excluded a MEWA that is exempt from Department of Labor (DOL) reporting requirements under 29 CFR 2520.101–2(c)(2)(ii)(B). This section of the DOL regulations generally excludes a MEWA that provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than to avoid the reporting requirements and does not extend beyond a limited time. A commenter suggested that the final regulations also exclude a MEWA that is exempt from reporting under 29 CFR 2520.101–2(c)(2)(ii)(A), which generally applies to an entity that would not be a MEWA but for the fact that it provides coverage to two or more trades or businesses that share a common control interest of at least 25 percent (applying principles similar to the principles of section 414(c)) at any time during the plan year. The commenter also suggested that the final regulations exclude a MEWA that is exempt from reporting under 29 CFR 2520.101–2(c)(2)(ii)(C), which generally applies to an entity that would not be a MEWA but for the fact that it provides coverage to persons who are not employees or former employees of the plan sponsor (such as non-employee members of the board of directors or independent contractors), if coverage of such persons does not exceed one percent of the total number of employees or former employees covered by the arrangement, determined as of the last day of the year to be reported, or determined as of the 60th day following the date the MEWA began operating in a manner such that a filing is required pursuant to 29 CFR 2520.101–2(e)(2) or (3).

The final regulations adopt these suggestions and follow the DOL rules excepting these entities from the DOL reporting requirements under 29 CFR 2520.101–2 governing MEWAs. The reasons supporting the DOL's filing exemption also justify exempting these arrangements from section 9010 as more akin to health coverage provided by a self-insured employer. Similar to the filing exemption for certain temporary MEWAs, these two filing exemptions are intended to address situations in which the status as a MEWA derives not from the design of the arrangement but instead from the limited participation by individuals who are not the employees of a single employer or from a desire to have a single plan for entities sharing substantial common ownership (though not sufficient to be treated as a single employer under the controlled group rules). Accordingly, a MEWA will not be considered a covered entity if it satisfies the requirements of 29 CFR 2520.101–2(c)(2)(ii)(A), (B), or (C) for the plan year ending with or within the section 9010 data year.

The proposed regulations provided that, solely for purposes of section 9010, an Entity Claiming Exception (ECE)[1] is subject to the same regime addressing MEWAs. Commenters requested that an ECE not categorically be treated as a MEWA for purposes of section 9010. Commenters pointed out that some ECEs are multiemployer plans and coverage during the period of their status as an ECE would not be consistent with this status. In addition, as a practical matter, an entity's status as an ECE is only relevant for reporting during a limited period of time. For these reasons, the final regulations adopt this suggestion so that whether an entity is or is not an ECE is not relevant to whether the entity is subject to section 9010.

*Voluntary Employees' Beneficiary Associations (VEBAs)*

In accordance with section 9010(c)(2)(D), the proposed regulations explicitly excluded any VEBA that is established by an entity other than an employer or employers for the purpose of providing health care benefits. Further, the preamble to the proposed regulations stated that, if an employer provides self-insured employee health benefits through a VEBA, the VEBA is not a covered entity because the exclusion for employers with self-insured arrangements under section 9010(c)(2)(A) applies. The preamble also stated that, if a VEBA purchases health insurance to cover the beneficiaries of the VEBA, the VEBA is not a covered entity because the issuer providing the health insurance that the VEBA purchases is the covered entity subject to the fee rather than the VEBA. The preamble stated that the Treasury Department and the IRS were not aware of any VEBAs that would be covered entities under the proposed regulations and invited comments on the types of VEBAs, if any, that do not fall within the exclusions and therefore would be covered entities.

A commenter requested that the final regulations clarify that a VEBA established by a union qualifies for the section 9010(c)(2)(D) exclusion. Commenters also asked for clarification that the section 9010(c)(2)(D) exclusion applies to any VEBA established by a joint board of trustees in the case of a multiemployer plan within the meaning of section 3(37) of ERISA. The final

[1] An ECE is defined in 29 CFR 2520.101–2(b) as an entity that claims it is not a MEWA on the basis that the entity is established or maintained pursuant to one or more agreements that the Secretary of Labor finds to be collective bargaining agreements within the meaning of section 3(40)(A)(i) of ERISA and 29 CFR 2510.3–40. We also note that ERISA section 501(b) imposes criminal penalties on any person who is convicted of violating the prohibition in ERISA section 519 against making false statements or representations of fact in connection with the marketing or sale of a MEWA.

regulations adopt these suggestions with respect to plans established by unions and joint boards of trustees because the union or joint board of trustees is an entity other than the employer or employers. Thus, in the case of a multiemployer plan that maintains a VEBA, neither the plan nor the VEBA is a covered entity.

Commenters also requested that the final regulations clarify the application of the section 9010(c)(2)(D) exclusion to a VEBA that is part of a single-employer plan established pursuant to a collective bargaining agreement and having a joint board of trustees. As in the case of a multiemployer plan, a VEBA that is, for example, part of a single-employer plan established by a joint board of trustees pursuant to section 302(c)(5) of the Labor Management Relations Act of 1947, is considered to be established by an entity other than the employer or employers and so is eligible for the section 9010(c)(2)(D) exclusion.

The preamble to the proposed regulations stated that, if a MEWA provides health benefits through a VEBA, the VEBA is not a covered entity. A commenter asked whether the section 9010(c)(2)(D) exclusion applies to a non-fully insured MEWA that is also a VEBA. The section 9010(c)(2)(D) exclusion does not apply to an entity that is both a non-fully insured MEWA and a VEBA because, for section 9010 purposes, the entity has been established by the employers whose employees participate in the MEWA, and the section 9010(c)(2)(D) exclusion does not apply to an employer-established VEBA. Additionally, the entity does not qualify as a self-insured arrangement that is eligible for the exclusion for self-insured employers under section 9010(c)(2)(A) because, as previously described in the section of this preamble titled ''Multiple Employer Welfare Arrangements (MEWAs),'' a non-fully insured MEWA is not a self-insured employer. Accordingly, a MEWA that is also a VEBA is a covered entity.

*Section 9010(c)(2)(C) Exclusion*

In accordance with section 9010(c)(2)(C)(i)–(iii), the proposed regulations excluded any entity (i) that is incorporated as a nonprofit corporation under State law; (ii) no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to, influence legislation (except as provided in section 501(h)), and that does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; and (iii) that receives more than 80 percent of its gross revenues from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act (which include Medicare, Medicaid, the Children's Health Insurance Plan (CHIP), and dual eligible plans).

Commenters suggested that the final regulations exclude a for-profit entity that meets the section 9010(c)(2)(C)(ii) and (iii) requirements. According to the commenters, imposing the fee on these for-profit entities will effectively reduce benefits provided under Medicare and Medicaid, require the entities to pass the cost of the fee back to the government, and competitively disadvantage these entities in favor of excluded nonprofit corporations. Another commenter suggested that the final regulations permit an entity that is treated as a nonprofit entity under State law to satisfy the section 9010(c)(2)(C)(i) requirement even if it is not incorporated as a nonprofit corporation. Commenters also suggested that the final regulations exclude an entity that meets the section 9010(c)(2)(C)(i) and (ii) requirements and that targets low-income, elderly, or disabled populations described in section 9010(c)(2)(C)(iii), but whose income is not derived from title XVIII, XIX, or XXI programs, but rather from similar types of programs that do not come under those titles. The final regulations do not adopt these suggested changes. The statutory language sets forth specific requirements for an entity to qualify for the exception, including that the entity be a nonprofit corporation and that the entity receive the required portion of its gross income from the enumerated Federal government programs.

Commenters suggested that the final regulations interpret the requirement set forth in section 9010(c)(2)(C)(iii), that the entity receive more than 80 percent of its gross revenues from enumerated Federal government programs to qualify for that exception, to apply only to revenues that relate to net premiums written. Because gross revenues include all revenues of the covered entity without taking into account their source, the final regulations do not adopt this suggestion.

As explained in the preamble to the proposed regulations, an entity is not required to be exempt from tax under section 501(a) to qualify for the section 9010(c)(2)(C) exclusion. However, because the provisions of section 9010(c)(2)(C)(ii) relating to private inurement, lobbying, and political campaign activity are the same as those provisions applicable to organizations described in section 501(c)(3), for purposes of applying these requirements, the proposed regulations adopted the standards set forth under section 501(c)(3) and the related regulations. Commenters generally agreed with this approach, which is adopted in the final regulations.

One commenter suggested that the final regulations incorporate a ''safe harbor'' under which a transaction will not violate the private inurement prohibition under section 9010(c)(2)(C)(ii) if either the transaction complies with applicable State insurance laws governing the reasonableness of transactions between a health insurance provider and its affiliates or the transaction is approved in accordance with certain procedures set forth in the regulations under section 4958 (relating to taxes on excess benefit transactions). The final regulations do not adopt this suggestion. The private inurement prohibition under section 501(c)(3) contains no exception for transactions that comply with State insurance laws or other applicable State or Federal laws. Similarly, while most situations that constitute inurement will also violate the general rules of section 4958, the two standards are not the same. See § 1.501(c)(3)–1(f)(2) of the Income Tax Regulations and § 53.4958–8(a) of the Foundation and Similar Excise Tax Regulations.

*Agencies and Instrumentalities as Governmental Entities*

Section 9010(c)(2)(B) excludes any governmental entity from the definition of covered entity. In defining the term *governmental entity,* the proposed regulations did not include instrumentalities. The preamble to the proposed regulations requested comments on the types of instrumentalities, if any, that would be considered covered entities under the general definition of covered entity and the extent to which those entities would qualify for other exclusions consistent with the statute.

Commenters suggested that the final regulations define governmental entity to include an instrumentality, citing statutory language that excludes ''any'' governmental entity and arguing that, in certain instances, an instrumentality that provides health insurance performs a governmental function and therefore should be excluded. For those reasons, the final regulations adopt this suggestion and define governmental entity to include any agency or instrumentality of the United States, a

State, a political subdivision of a State, an Indian tribal government, or a subdivision of an Indian tribal government.

The final regulations also revise the governmental entity definition to delete the specific provision relating to any public agency that is created by a State or political subdivision thereof and contracts with the State to administer State Medicaid benefits through local providers or health maintenance organizations (HMOs). The Treasury Department and the IRS intend that such a public agency would qualify as an agency or instrumentality of a State or political subdivision thereof for purposes of the governmental entity definition. See JCT General Explanation at 330.

Determinations of whether an entity is an agency or instrumentality have typically been analyzed on a facts and circumstances basis. In determining whether an entity is an agency or instrumentality, courts have applied a test similar to the six-factor test in Revenue Ruling 57–128 (1957–1 CB 311), which generally provides guidance on whether an entity is an instrumentality for purposes of the exemption from employment taxes under sections 3121(b)(7) and 3306(c)(7). See, for example, *Bernini* v. *Federal Reserve Bank of St. Louis, Eighth District,* 420 F.Supp. 2d 1021 (E.D. Mo. 2005) and *Rose* v. *Long Island Railroad Pension Plan,* 828 F.2d 910, 918 (2d Cir. 1987), cert. denied, 485 U.S. 936 (1988). For further background information relating to agency or instrumentality determinations, see the ''Background'' section of the preamble in the section 414(d) draft general regulations in the Appendix to the ANPRM (REG–157714–06) relating to governmental plan determinations, 76 FR 69172 (November 8, 2011).

Applying principles similar to those described in Revenue Ruling 57–128, in determining whether an entity is an agency or instrumentality for purposes of section 9010, factors taken into consideration include whether the entity is used for a governmental purpose and performs a governmental function. The Treasury Department and the IRS question whether providing health insurance on a commercial market in direct competition with non-governmental commercial entities is a governmental function, absent particular circumstances. Accordingly, an entity may jeopardize its status as an agency or instrumentality if it engages in the business of providing insurance on the commercial market on a continuing and regular basis.

Further, section 9010(i) authorizes the IRS to prescribe such regulations as are necessary or appropriate to prevent avoidance of the purposes of section 9010, including inappropriate actions taken to qualify as an excluded entity under section 9010(c)(2). If the Treasury Department and the IRS conclude that agencies or instrumentalities have entered the commercial market in competition with commercial entities in a manner that makes it inappropriate to apply the governmental entity exclusion under section 9010(c)(2)(B), the Treasury Department and the IRS may reconsider the exclusion of agencies and instrumentalities and exercise the authority under section 9010(i) to address particular concerns in this area.

*Educational Institutions*

A commenter suggested that the final regulations exclude educational institutions from the definition of covered entity. The final regulations do not adopt this request. The statute does not exclude educational institutions from the definition of covered entity, but as noted in the preamble to the proposed regulations, other exceptions may apply. For example, if an educational institution uses the premiums it receives from students to purchase insurance from a separate, unrelated issuer, the issuer, and not the educational institution, will be the covered entity for purposes of section 9010. If an educational institution provides students with health coverage through a self-insured arrangement, the exclusion for self-insuring employers does not apply because the institution is not providing health coverage as an employer. However, other exclusions may apply. For example, the exclusion for governmental entities applies if an educational institution is a wholly-owned instrumentality of a State. In addition, although an educational institution that is a covered entity must report to the IRS its net premiums written, it will not be subject to the fee unless the institution (or its controlled group that is treated as a single covered entity) has net premiums written for United States health risks of more than $25 million pursuant to section 9010(b)(2)(A).

*Other Entities*

Commenters suggested that the final regulations exclude certain section 501(c)(5) labor organizations that provide health coverage under the Federal Employees Health Benefit Plan (FEHBP) on the basis that providing health coverage is part of their exempt function as a section 501(c)(5) entity. The commenters asserted that, although a section 501(c)(5) entity is not organized as a VEBA, it operates like a VEBA because of the various FEHBP rules (including, for example, on use of reserves) and therefore should be treated as a VEBA for section 9010 purposes. The final regulations do not adopt this suggestion. Congress identified specific exclusions from section 9010 and there is no statutory exclusion for section 501(c)(5) entities.

Another commenter suggested that the final regulations exclude high risk pools under section 1101 of the ACA, which will expire on December 31, 2013. Section 9010(c)(1) defines a covered entity to mean any entity that provides health insurance for a United States health risk in the year that the fee is due. The first year the fee is due is 2014. Therefore, for the first fee year, an entity is not a covered entity unless it provides health insurance for United States health risks in 2014. Because high risk pools will expire on December 31, 2013, they will not provide health insurance in 2014 and will not be covered entities. In the event a high risk pool provides health insurance for United States health risks in 2014, it will be a covered entity if it does not meet one of the exclusions described in section 9010(c)(2).

A commenter requested that the final regulations provide an exclusion for an entity that is selling or otherwise failing to continue the majority of its health insurance business by December 31, 2013, but is contractually required to provide some residual health insurance. The entity's fee liability for 2014 based on the 2013 data year will be significantly larger than the total amount of net premiums written that the entity will collect in 2014. The final regulations do not adopt this request because it is inconsistent with the statute, which bases the fee liability on net premiums written during the data year.

The proposed regulations defined the term *covered entity* to include an HMO, as defined in section 9832(b)(3). A commenter requested that the final regulations exclude an HMO that is a tax-exempt organization described in section 501(c)(3) or (4) on the basis that Congress did not intend to subject a tax-exempt HMO to the fee. The final regulations do not adopt this suggestion. Section 9010(c)(2) describes the entities that are excluded from the definition of covered entity. While section 9010(c)(2)(D) excludes certain types of VEBAs described in section 501(c)(9), there is no similar exclusion for an entity that qualifies as a tax-exempt organization under either section 501(c)(3) or (4). However, such a tax-

exempt organization would be eligible for the partial exclusion under section 9010(b)(2)(B).

*Disregarded Entities*

Two commenters requested further guidance on how to treat disregarded entities for purposes of section 9010. One commenter suggested that the final regulations specifically state that the general rules for disregarded entities apply. A second commenter suggested that, solely for section 9010 purposes, a disregarded entity should always be regarded as a corporation. The final regulations do not adopt any special entity classification rules. Thus, if a covered entity is an eligible entity under § 301.7701–3(a) of the Procedure and Administration Regulations, has a single owner, and does not elect to be classified as a corporation under § 301.7701–3(c), then the covered entity is disregarded as an entity separate from its owner and its activities are treated in the same manner as a branch or division of its owner pursuant to § 301.7701–2(a). Additionally, although § 301.7701–2(c)(2)(v) treats a disregarded entity as a corporation for certain enumerated excise taxes, the fee under section 9010 is not among the enumerated excise taxes. However, an insurance company is a corporation under § 301.7701–2(b)(4) and cannot be disregarded as an entity separate from its owner. See also Rev. Rul. 83–132 (1983–2 CB 270). Under sections 816(a) and 831(c), a company is an insurance company if more than half of its business during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Therefore, if the covered entity is an insurance company under sections 816(a) and 831(c), then it is a corporation and cannot be disregarded as an entity separate from its owner.

*Controlled Groups*

In accordance with section 9010(c)(3), the proposed regulations treated a controlled group as a single covered entity, and defined a controlled group as a group of two or more persons, including at least one person that is a covered entity, that are treated as a single employer under section 52(a), 52(b), 414(m), or 414(o).

Section 52(a) and (b) provide rules that treat all organizations that are members of a controlled group as a single entity. Generally, section 52(a) provides that the term *controlled group of corporations* has the meaning given to such term by section 1563(a), except that ''more than 50 percent'' is substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1) and the determination is made without regard to section 1563(a)(4) (relating to special rules for certain insurance companies) and 1563(e)(3)(C) (relating to attribution rules for ownership interest held under a trust described in section 401(a) that is exempt from tax under section 501). Section 52(b) provides similar rules for determining whether trades or businesses (whether or not incorporated) are under common control. Section 414(m) requires that all members of an affiliated service group be treated as a single organization, and section 414(o) provides authority for additional rules that may be necessary to prevent the avoidance of certain requirements related to employee benefits.

A commenter suggested that the final regulations clarify the circumstances under which nonprofit organizations are included in controlled groups under section 9010(c)(3). The Treasury Department and the IRS are considering whether further guidance is needed under section 52(a) or (b) to address either organizations exempt from tax under section 501(a) or nonprofit organizations that, although not exempt from tax under section 501(a), do not have members or shareholders that are entitled to receive distributions of the organization's income or assets (including upon dissolution) or that otherwise retain equity interests similar to those generally held by owners of for-profit entities. Until further guidance is issued, those two types of organizations may either rely on a reasonable, good-faith application of section 52(a) and (b) (taking into account the reasons for which the controlled group rules are incorporated into section 9010) or apply the rules set forth in § 1.414(c)–5(a) through (d) (but substituting ''more than 50 percent'' in place of ''at least 80 percent'' each place it appears in § 1.414(c)–(5).

**Health Insurance**

*In General*

Section 9010 does not define health insurance, providing in section 9010(h)(3) only that health insurance does not include coverage only for accident, or disability income insurance, or any combination thereof as described in section 9832(c)(1)(A); coverage only for a specified disease or illness and hospital indemnity or other fixed indemnity insurance as described in section 9832(c)(3); insurance for long-term care; or Medicare supplemental health insurance (as defined in section 1882(g)(1) of the Social Security Act). The proposed regulations generally defined the term *health insurance,* subject to certain exclusions, by reference to section 9832(b)(1)(A) to mean benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurance issuer. The final regulations clarify that these benefits constitute health insurance when they are offered by any type of covered entity, and not solely by a health insurance issuer within the meaning of section 9832(b)(2).

*Stop-Loss Coverage*

Several comments requested that the final regulations clarify the treatment of stop-loss coverage. Employers that self-insure their employees' health benefits frequently purchase stop-loss coverage to mitigate risk. The stop-loss provider assumes the risk of claims above a certain agreed-upon threshold known as the attachment point. Some commenters suggested including stop-loss coverage in the definition of health insurance for purposes of section 9010, whereas other commenters suggested excluding it. The DOL, the Department of Health and Human Services (HHS), and the Treasury Department are concerned that more employers in small group markets with healthier employees may pursue self-insured arrangements with stop-loss arrangements that have low attachment points as a functionally equivalent alternative to an insured group health plan. As a result, the three agencies issued a Request for Information (RFI) regarding such practices, with a focus on the prevalence and consequences of stop-loss coverage at low attachment points. See 77 FR 25788 (May 1, 2012). Because the scope of stop-loss coverage that may constitute health insurance, if any, has not been determined, the final regulations do not expressly include stop-loss coverage in the definition of health insurance. Accordingly, section 9010 will not apply to stop-loss coverage until such time and only to the extent that future guidance addresses the issue of whether, and if so under what circumstances, stop-loss coverage constitutes health insurance.

*Limited Scope Dental and Vision Benefits*

The proposed regulations defined health insurance to include limited scope dental and vision benefits under section 9832(c)(2)(A). Commenters suggested revising the definition of health insurance to exclude limited scope dental and vision benefits (sometimes referred to as stand-alone

dental and vision benefits). Alternatively, commenters suggested including only those dental and vision policies that can be offered on an Exchange, such as pediatric dental plans. The final regulations do not adopt these suggestions. The JCT General Explanation indicates that dental and vision benefits are intended to be included as health insurance for purposes of section 9010 and the comments received do not compel a different conclusion. See JCT General Explanation at 331. Accordingly, the final regulations retain the rule in the proposed regulations and provide that limited scope dental and vision benefits, including arrangements that may be sold on an Exchange (for example, pediatric dental coverage), are health insurance for purposes of section 9010.

*Coverage Funded by Targeted Government Programs*

Commenters suggested that the final regulations exclude coverage funded by government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act (which include Medicare, Medicaid, CHIP, and dual eligible plans) from the definition of health insurance or exclude revenues received from these government programs from net premiums written. The final regulations do not adopt these suggestions. A full exclusion for these types of coverage or associated revenues would not be consistent with section 9010. Section 9010(c)(2)(C) excludes a limited subset of entities that provide coverage funded by these governmental programs, which indicates that entities providing such coverage are otherwise providing health insurance that is subject to the fee. The JCT General Explanation further indicates that Medicare and Medicaid coverage is health insurance that is subject to the fee. Thus, an entity providing this type of coverage is a covered entity unless it qualifies for a statutory exclusion from the definition of a covered entity, such as the section 9010(c)(2)(C) exclusion. See JCT General Explanation at 330 and 331.

*Indemnity Reinsurance*

The proposed regulations provided that, solely for purposes of section 9010, health insurance does not include indemnity reinsurance, defined as an agreement between two or more insurance companies under which the reinsuring company agrees to accept, and to indemnify the issuing company for, all or part of the risk of loss under policies specified in the agreement and the issuing company retains its liability to, and its contractual relationship with, the individuals whose health risks are insured under the policies specified in the agreement. A commenter suggested that the final regulations clarify that the definition of indemnity reinsurance extends to reinsurance obtained by HMOs. The final regulations adopt this suggestion and clarify that the issuer of the policies specified in the indemnity reinsurance agreement may be any covered entity.

Commenters asked about the treatment of a ''carve-out'' arrangement or similar types of arrangement in which one insurer accepts responsibility for all or part of the health risk within a defined category of medical benefits that another insurer is obligated to provide. For example, a full-service insurer that includes dental benefits as part of its health insurance plan may contract with a dental insurer to provide those benefits to plan members, but still retain an exclusive contractual relationship with plan members and liability for benefits. The commenters expressed concern that premiums received by both the full-service insurer and the secondary services insurer for these benefits could be subject to the fee. Although the final regulations do not expressly address a carve-out arrangement, the secondary services insurer in such an arrangement is not providing health insurance for purposes of section 9010 to the extent the arrangement meets the definition of indemnity reinsurance.

*Subcapitation*

A commenter requested that the final regulations clarify the treatment of a subcapitation arrangement. Under a typical subcapitation arrangement, a Medicaid plan provider contracts with a separate service provider to provide certain services to the Medicaid plan participants and share some of the provider's risk. A Medicaid plan provider that enters into a subcapitation arrangement remains fully liable on the underlying plans, and any amounts paid to compensate the service provider for the subcapitation arrangement are not considered premiums for State regulatory purposes or reported as such. Therefore, although the final regulations do not directly address a subcapitation arrangement, amounts paid to a service provider under such an arrangement are not included in net premiums written for health insurance to the extent they are not treated as premiums for State regulatory and reporting purposes.

*Employee Assistance Programs*

Commenters requested that the final regulations exclude benefits under an employee assistance program (EAP) from the definition of health insurance, including an EAP that is treated as insurance in California or Nevada. Generally, an EAP does not exhibit the risk pooling and risk transferring characteristics of insurance, but certain States regulate benefits under an EAP as insurance in some situations. The Treasury Department, DOL, and HHS currently are considering guidance that would treat benefits under an EAP as an excepted benefit under section 9832(c) (as well as corresponding provisions of ERISA and the Public Health Service Act (42 U.S.C. chapter 6A) (PHSA)), and provided in Q&A 9 of Notice 2013–54 (2013–40 IRB 287; September 30, 2013) that until that separate rulemaking is finalized in other guidance, and through at least 2014, a taxpayer may treat an EAP that does not provide significant benefits in the nature of medical care or treatment as constituting excepted benefits. Whether and under what conditions an EAP provides health insurance coverage has been a longstanding issue that this other guidance is intended to address by defining an EAP and setting forth the conditions under which the benefits under an EAP will be treated as excepted benefits.

Because the extent to which benefits under an EAP may constitute health insurance has not been determined, the final regulations do not expressly define health insurance to include benefits under an EAP. If an EAP provides significant benefits in the nature of medical care or treatment, those benefits would meet the definition of health insurance for section 9010 purposes. Otherwise, benefits under an EAP will not be treated as health insurance for section 9010 purposes until such time and only to the extent that the Treasury Department, DOL and HHS determine such benefits do not qualify as an excepted benefit.

Commenters also requested that the final regulations exclude coverage under a disease management program or a wellness program from the definition of health insurance. The final regulations do not specifically address the treatment of a stand-alone wellness plan or disease management program. These programs generally do not exhibit the risk shifting and risk distribution characteristics of insurance. Additionally, a program of this type may be contained within an EAP that satisfies the standard in Q&A 9 of Notice 2013–54 for being an excepted benefit (taking into account the benefits provided under the programs in determining whether the EAP provides substantial benefits in the nature of

medical treatment). For these reasons, the final regulations do not expressly define health insurance to include coverage under a disease management program or wellness program. If these programs provide significant benefits in the nature of medical care or treatment, those benefits would meet the definition of health insurance for section 9010 purposes. Otherwise, coverage under these programs will not be treated as health insurance for section 9010 purposes until such time and only to the extent that the three agencies determine these benefits do not qualify as an excepted benefit.

*Long-Term Care*

The proposed regulations excluded from the definition of health insurance any benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof, within the meaning of section 9832(c)(2)(B), and such other similar, limited benefits to the extent such benefits are specified in regulations under section 9832(c)(2)(C). A commenter questioned whether this exclusion applies to Medicaid managed long-term care premiums, such as those provided to covered entities that may participate in State Medicaid managed long-term care programs. To the extent Medicaid plan providers can separately identify premiums received for long-term care, these amounts are not for health insurance and are not included in net premiums written.

*Medicare Advantage and Medicare Part D Plans*

Some employers or unions provide Medicare Advantage or Medicare Part D benefits in connection with an Employer Group Waiver Plan (EGWP) for employees and retirees who are Medicare beneficiaries. According to commenters, an employer or union can provide these benefits on a self-insured basis. Commenters requested that the final regulations clarify whether a union or employer that provides Medicare Advantage and Medicare part D benefits under an EGWP or similar arrangement is a covered entity subject to section 9010 with respect to premiums received for the coverage. No change was made in the final regulations to specifically address this issue. However, while the benefits provided by these arrangements may constitute health insurance within the meaning of section 9010, an employer or union that provides benefits under an EGWP or similar arrangement is not a covered entity to the extent the arrangement is eligible for the self-insuring employer exception under section 9010(c)(2)(A).

*Medicare Cost Contract Plans*

A commenter asked that the final regulations clarify how section 9010 applies to the Medicare cost contract portion of an entity's business. A Medicare cost contract plan is a type of plan established by section 1876 of Title XVIII of the Social Security Act. Cost contract plans are paid based on the reasonable costs incurred by delivering Medicare-covered services to plan members. Although the final regulations do not specifically address the treatment of a Medicare cost contract plan, benefits under a Medicare cost contract plan are health insurance for section 9010 purposes if they meet the general definition of health insurance and do not qualify for a specific exclusion.

**Section 9010(b)(2)(B) Partial Exclusion**

After applying section 9010(b)(2)(A) to determine the amount of net premiums written for health insurance of United States health risks that are taken into account, the proposed regulations excluded under section 9010(b)(2)(B) 50 percent of the remaining net premiums written for health insurance of United States health risks that are attributable to the activities (other than activities of an unrelated trade or business as defined in section 513) of any covered entity qualifying under section 501(c)(3), (4), (26), or (29) and exempt from tax under section 501(a). Commenters requested that the final regulations apply this exclusion to a for-profit hospital health plan (HHP) that is owned and controlled by an entity exempt from tax under section 501(a) and further described in section 501(c). According to the commenters, an HHP functions like a nonprofit entity because it reinvests whatever profits it produces each year in its parent owner's charitable mission. The final regulations do not adopt this request. By statute, the partial exclusion only applies to a covered entity that is a section 501(c)(3), (4), (26), or (29) entity, and even then only with respect to premium revenue from its exempt activities.

One commenter suggested that the final regulations require any covered entity claiming the partial exclusion to submit an IRS determination letter recognizing it as tax-exempt under section 501(c)(3), (4), (26), or (29). Another commenter objected to this suggestion on the basis that the Code does not require all tax-exempt entities to apply to the IRS for recognition of tax-exempt status. The final regulations do not impose any additional requirements on entities claiming the partial exclusion. For purposes of section 9010, whether an entity qualifies as exempt from Federal income tax under section 501(a) as an organization described in section 501(c)(3), (4), (26), or (29) will be determined under the Code provisions applicable to those organizations. To provide greater certainty, the final regulations provide that an entity is eligible for the section 9010(b)(2)(B) partial exclusion if it meets the requirements for that exclusion as of December 31st of the data year.

**Reporting and Penalties**

Section 9010(g)(1) requires each covered entity to report to the IRS its net premiums written for health insurance for United States health risks during the data year. The proposed regulations required that this information be reported on Form 8963, ''Report of Health Insurance Provider Information.'' Commenters suggested that the final regulations require an entity that qualifies for an exclusion from the definition of covered entity to report its net premiums written to claim the exclusion. The final regulations do not adopt this suggestion. The required reporting under section 9010(g)(1) only applies to covered entities.

A commenter requested that each covered entity be required to report even if it receives no more than $25 million in net premiums written and therefore is not liable for the fee. The proposed regulations already imposed this requirement in accordance with the statute. The final regulations retain this requirement.

Section 9010(g)(2) imposes a penalty for failing to timely submit a report containing the required information unless the covered entity can show that the failure is due to reasonable cause. Section 9010(g)(3) imposes an accuracy-related penalty for any understatement of a covered entity's net premiums written. Commenters requested that the final regulations provide a reasonable cause exception for the accuracy-related penalty similar to the reasonable cause exception for the failure to report penalty. Unlike section 9010(g)(2), section 9010(g)(3) does not contain a reasonable cause exception. Therefore, the final regulations do not create a reasonable cause exception for the accuracy-related penalty. However, the final regulations require a covered entity to submit a corrected Form 8963 during the error correction period if the entity believes there are any errors in the preliminary fee calculation. The corrected Form 8963 will replace the original Form 8963 for all purposes, including for the purpose of determining whether an accuracy-

related penalty applies, except that a covered entity remains subject to the failure to report penalty if it fails to timely submit the original Form 8963.

The proposed regulations clarified that the failure to report penalty and the accuracy-related penalty apply in addition to the fee. The final regulations retain this clarification and further clarify that a covered entity may be liable for both penalties.

A commenter suggested that the final regulations create a safe harbor for the failure to report penalty imposed by section 9010(g)(2) and waive or reduce the penalty for small businesses, or exclude small businesses altogether from the definition of covered entity so that the penalty does not apply. The final regulations do not adopt this suggestion. The statute does not exclude small businesses from either the definition of covered entity or the requirement to report. However, certain statutory provisions will mitigate the impact on small business. Although a small business that is a covered entity must report its net premiums written, it will not be subject to the fee if its net premiums written are $25 million or less pursuant to section 9010(b)(2)(A). Further, section 9010(g)(2) allows the IRS to waive the failure to report penalty if there is reasonable cause for such failure. The IRS will determine whether reasonable cause exists for a covered entity's failure to report based on the facts and circumstances.

Commenters requested that the IRS wait to assess the accuracy-related penalty until the error correction process is complete. Under section 9010(g)(3)(A), the amount of the accuracy-related penalty is equal to the excess of the amount of the covered entity's fee determined in the absence of the understatement (that is, the correct fee amount) over the amount of the fee determined based on the understatement (that is, the amount of the fee based on understated reporting). Because the fee is allocated among covered entities based on each entity's net premiums written, the IRS must determine the correct amount of net premiums written for all covered entities before it can determine the correct fee amount for a covered entity. Therefore, the IRS cannot compute and assess any accuracy-related penalties until the conclusion of the error correction process when the IRS computes the final bills. As stated earlier in this preamble, if the covered entity timely submits a corrected Form 8963 during the error correction period, the corrected Form 8963 will replace the original Form 8963 for the purpose of determining whether an accuracy-related penalty applies.

**Fee Calculation and Error Correction Process**

*In General*

The proposed regulations required each covered entity to report annually its net premiums written for health insurance of United States health risks during the data year to the IRS on Form 8963 by May 1st of the fee year. The proposed regulations also required the IRS to send each covered entity its final fee calculation no later than August 31st, and required the covered entity to pay the fee by September 30th by electronic funds transfer. In addition, the proposed regulations required the IRS to send preliminary fee calculations and give covered entities an opportunity to submit error correction reports, with the time and manner of error correction reporting to be specified in other guidance published in the Internal Revenue Bulletin.

The final regulations adopt April 15th as the date on which the Form 8963 is due, rather than May 1st, to provide additional time to prepare the preliminary fee calculation for each covered entity. Also, to ensure that any errors are timely corrected, the final regulations require a covered entity to review its preliminary fee calculation and, if it believes there are any errors, to timely submit to the IRS a corrected Form 8963 during the error correction period. As stated earlier in this preamble, the corrected Form 8963 will replace the original Form 8963. In the case of a controlled group, if the preliminary fee calculation for the controlled group contains one or more errors, the corrected Form 8963 must include all of the required information for the entire controlled group, including members that do not have corrections. Further rules regarding the manner for submitting Form 8963, the time and manner for notifying covered entities of their preliminary fee calculation, and the time and manner for submitting error correction reports for the error correction process are contained in other guidance in the Internal Revenue Bulletin being published concurrently with these final regulations.

Commenters suggested that the final regulations create a ''true-up'' process by which the fee will be continually adjusted from year to year. Because the fee is an allocated fee, allowing a true-up process for one covered entity will result in adjustments to the fee for all covered entities. In the interest of providing finality and certainty to fee liability, the final regulations do not adopt this suggestion.

*Source of Data Used to Calculate the Fee*

The proposed regulations defined the term *net premiums written* to mean premiums written, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions and medical loss ratio (MLR) rebates with respect to the data year. The preamble to the proposed regulations explained that, for covered entities that file the Supplemental Health Care Exhibit (SHCE) with the National Association of Insurance Commissioners (NAIC), net premiums written for health insurance generally will equal the amount reported on the SHCE as direct premiums written minus MLR rebates with respect to the data year, subject to any applicable exclusions under section 9010 such as exclusions from the term *health insurance.*

Commenters suggested that the final regulations require a covered entity to use the SHCE and any equivalent forms as the basis for determining net premiums written if it is required to file the SHCE and any equivalent forms pursuant to State reporting requirements. The final regulations do not adopt this suggestion because forms can change. The instructions to Form 8963 provide additional information on how to determine net premiums written using the SHCE and any equivalent forms as the source of data, and can be updated to reflect changes in forms.

*Medical Loss Ratio (MLR) Rebates*

The proposed regulations invited comments on how to compute MLR rebates with respect to the data year using data reported on the SHCE. Commenters suggested that MLR rebates be computed on an accrual basis using lines 5.3, 5.4, and 5.5 of the 2012 SHCE. In response to this comment, the final regulations clarify that MLR rebates are computed on an accrual basis. The final regulations do not designate specific SHCE line numbers as the source of data for computing MLR rebates because forms can change. Instead, the instructions to Form 8963 provide this information.

*Medicaid Bonuses*

A commenter requested that the final regulations address the treatment of Medicaid bonuses in determining net premiums written. According to the commenter, Medicaid plans sometimes receive bonuses for meeting plan goals. In some cases, the bonuses are paid up front and must be returned if the plan

does not meet its goals, and in other cases, bonuses are paid only after the plan meets its goals. The final regulations do not create a special rule for the treatment of Medicaid bonuses. The treatment of Medicaid bonuses in determining net premiums written depends on whether and when these amounts are treated as premiums written for State or other Federal regulatory and reporting purposes.

*Amounts Taken Into Account*

In accordance with section 9010(b)(2)(A), the proposed regulations provided that, for each covered entity (or each controlled group treated as a single covered entity), the IRS will not take into account the first $25 million of net premiums written. The IRS will take into account 50 percent of the net premiums written for amounts over $25 million and up to $50 million, and 100 percent of the net premiums written that are over $50 million. Thus, for any covered entity with net premiums written of $50 million or more, the IRS will not take into account the first $37.5 million of net premiums written. Additionally, after this reduction, the proposed regulations provided that, in accordance with section 9010(b)(2)(B), if the covered entity (or any member of the controlled group treated as a single covered entity) is exempt from tax under section 501(a) and is described in section 501(c)(3), (4), (26), or (29), the IRS will take into account only 50 percent of the remaining net premiums written of that entity (or member) that are attributable to its exempt activities.

A commenter asked how the fee will be calculated for a controlled group that is treated as a single covered entity when some but not all of the group's members qualify for the 50-percent exclusion under section 9010(b)(2)(B). The final regulations clarify that, in this circumstance, the section 9010(b)(2)(A) exclusion applies first to each member of the controlled group on a pro rata basis, and then the section 9010(b)(2)(B) exclusion applies only to eligible members of the group.

For example, if a controlled group consists of one member with $100 million in net premiums written and a second member with $50 million in net premiums written, two-thirds of the group's total $37.5 million reduction under section 9010(b)(2)(A), or $25 million, applies to the first member, and the remaining one-third, or $12.5 million, applies to the second member. Therefore, after this initial reduction, the first member has $75 million of net premiums written ($100 million minus $25 million), and the second member has $37.5 million of net premiums written ($50 million minus $12.5 million). If the second member is eligible for the 50-percent exclusion under section 9010(b)(2)(B), the 50-percent exclusion applies to this member's remaining net premiums written, resulting in $18.75 million (50 percent of $37.5 million) being taken into account. Thus, total net premiums written taken into account for this controlled group are $93.75 million ($150 million minus $37.5 million minus $18.75 million).

**Designated Entities**

The proposed regulations required each controlled group to have a designated entity, defined as a person within the controlled group that is designated to act on behalf of the controlled group with regard to the fee. The proposed regulations further provided that if the controlled group, without regard to foreign corporations included under section 9010(c)(3)(B), is also an affiliated group that files a consolidated return for Federal income tax purposes, the designated entity is the common parent of the affiliated group identified on the tax return filed for the data year. If the controlled group is not a part of an affiliated group that files a consolidated return, the proposed regulations allowed the controlled group to select its designated entity but did not require it to do so. The proposed regulations also required each member of a controlled group to maintain a record of its consent to the designated entity selection and required the designated entity to maintain a record of all member consents. Under the proposed regulations, if the controlled group did not select a person as its designated entity, the IRS would select a person as a designated entity for the controlled group and advise the designated entity accordingly.

The final regulations modify the proposed regulations, which provided that the common parent of a consolidated group was the designated entity in all cases. To better coordinate with the consolidated return regulations, the final regulations provide that the designated entity of a controlled group, without regard to foreign corporations included under section 9010(c)(3)(B), that is a consolidated group (within the meaning of § 1.1502–1(h)) is the agent for the group (within the meaning of § 1.1502–77). In the case of a controlled group that is not a part of an affiliated group that files a consolidated return, the Treasury Department and the IRS believe that the controlled group members are in the best position to determine which of its members should be the designated entity. To promote greater certainty and ease of administration in the fee reporting and determination process, the final regulations thus require, rather than permit, a controlled group that is not also a consolidated group to select its designated entity. The final regulations further provide that the IRS will select a member of the controlled group to be the designated entity for the controlled group if a controlled group fails to do so, but the controlled group may be liable for penalties for failure to meet its filing requirements. In the event the controlled group fails to select a designated entity and the IRS selects a designated entity for the controlled group, the final regulations deem all members of the controlled group that provide health insurance for a United States health risk to have consented to the IRS's selection of the designated entity.

**Disclosure**

Section 9010(g)(4) provides that section 6103 (relating to the confidentiality and disclosure of returns and return information) does not apply to any information reported by the covered entities under section 9010(g). The preamble to the proposed regulations stated that the Treasury Department and the IRS are considering making available to the public the information reported on Form 8963, including the identity of the covered entity and the amount of its net premiums written, at the time the notice of preliminary fee calculation is sent, and invited comments on which reported information the IRS should make publicly available. Numerous commenters requested that the IRS make all information reported on Form 8963 available to the public, and several commenters requested that this information be reported on the IRS Web site no later than 15 days after the reporting deadline to promote transparency and assist health insurers in determining whether an error correction request is necessary. One commenter requested that consumers have access to the information that shows how much each covered entity will pay. In response to comments, the final regulations provide that the information reported on each Form 8963 will be open for public inspection or available upon request. The Treasury Department and the IRS expect that, at a time to be determined, certain information will be made available on *www.irs.gov,* including the identity of each reporting entity and the amount of its reported net premiums written.

**Expatriate Policies**

In accordance with section 9010(d), the proposed regulations defined the term *United States health risk* to mean the health risk of any individual who is (1) a United States citizen, (2) a resident of the United States (within the meaning of section 7701(b)(1)(A)), or (3) located in the United States, with respect to the period such individual is so located. The preamble to the proposed regulations requested comments on how the final regulations should apply to expatriate policies. The medical loss ratio final rule issued by HHS (MLR final rule) defines expatriate policies as predominantly group health insurance policies that provide coverage to employees, substantially all of whom are: (1) Working outside their country of citizenship; (2) working outside their country of citizenship and outside the employer's country of domicile; or (3) non-U.S. citizens working in their home country. 45 CFR 158.120(d)(4). The NAIC tracks the definition in the MLR final rule for purposes of State reporting requirements.

The proposed regulations did not provide specific rules for expatriate policies. However, the definitions of covered entity and health insurance in the proposed regulations only extended to entities and policies that are subject to State or Federal regulation. Commenters expressed the concern that the proposed regulations provided an unfair advantage to foreign health insurers. Not all foreign insurers issuing expatriate policies on United States health risks are subject to State regulation or to Federal regulation under ERISA. As a result, commenters asserted that a foreign insurance company that is not a covered entity will be able to charge less than a U.S. insurance company for nearly identical expatriate policies. Commenters suggested that the final regulations exclude expatriate policies (or defer their inclusion until more facts can be gathered). Alternatively, commenters suggested broadening the definition of covered entity to include a foreign insurer regardless of whether it is subject to State or Federal regulation.

The final regulations do not adopt these suggestions. Section 9010 defines a United States health risk to include the health risk of a U.S. citizen or a resident alien. An insurer that issues a policy to a U.S. citizen or resident living abroad is still providing coverage for a United States health risk, despite the fact that the individual may not be currently residing in the United States. Thus, excluding expatriate policies is inconsistent with the language of section 9010(d).

Alternatively, broadening the definition of covered entity to include a foreign insurer that does not do business in the United States is not in the interest of sound tax administration. Legal and practical restrictions significantly limit the ability of the IRS to compel an entity that does not do business in the United States to file a report and pay a tax or fee. Further, the Treasury Department and the IRS expect that, in the overwhelming majority of cases, foreign insurers that do not do business in the United States will not have more than $25 million in net premiums written for United States health risks and thus will not be subject to liability for the fee. Therefore, the final regulations do not expand the definition of covered entity to include a foreign insurer that does not do business in the United States.

The proposed regulations created a presumption under which the entire amount reported on the SHCE filed with the NAIC pursuant to State reporting requirements will be considered to be for United States health risks unless the covered entity can demonstrate otherwise. Commenters expressed concern that the data necessary to affirmatively establish that an individual is not a United States health risk will be difficult for covered entities to obtain because they will need to know the location of each insured individual at all times and that individual's nationality. Moreover, commenters contended that such information may not be clear or accurate because location or nationality can vary among multiple members of the same family (some of whom may hold dual citizenship), and that covered entities may simply be unable to obtain such information because of the constant mobility of those covered. Commenters suggested allowing a covered entity to determine expatriate net premiums written for United States health risks by multiplying its total expatriate net premiums written by the ratio of claims paid in the United States to claims paid worldwide. The final regulations do not adopt this suggestion. A ratio based on claims paid in the United States would not accurately represent the relative proportion of United States health risks because a United States health risk includes the health risks of U.S. citizens who are living abroad. The Treasury Department and the IRS also considered alternative methods for a covered entity to account for its expatriate policies, but were unable to identify any that would be verifiable and administrable. Therefore, the final regulations retain the presumption in the proposed regulations and allow a covered entity to demonstrate that certain net premiums written are not for a United States health risk.

**United States Possessions**

Commenters suggested that the fee should not apply to health insurance providers in Puerto Rico and Guam. The final regulations do not adopt this suggestion. Section 9010(h)(2) specifically states that the term *United States* includes the U.S. possessions. Section 9010(c)(1) defines a covered entity as any entity that provides health insurance for any United States health risk, and under section 9010(d)(3), a United States health risk includes coverage of the health risk of any individual located in the U.S. possessions. To aid in determining whether an entity qualifies as a covered entity, the proposed regulations incorporated the definition of health insurance issuer under section 9832(b)(2) as one category of covered entity. The only definition of health insurance issuer in the Code is the definition of health insurance issuer in section 9832(b)(2), and the language of this provision is substantially similar to the only definition of health insurance issuer referenced in the ACA.[2] Section 9832(b)(2) defines a health insurance issuer as an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and that is subject to State laws that regulate insurance within the meaning of section 514(b)(2) of ERISA. Under section 514(b)(2) of ERISA, State law that regulates insurance generally means any State regulation. Section 3(10) of ERISA defines *State* for purposes of ERISA to include the U.S. possessions. Accordingly, the references to State and State law in section 9832(b)(2) encompass the 50 States, the District of Columbia, and the U.S. possessions.

**Taxability and Other Treatment of the Fee**

Section 9010(f)(2) treats the fee as a tax described in section 275(a)(6) (relating to taxes for which no deduction is allowed). Before issuing the proposed regulations, the Treasury Department and the IRS received comments stating that covered entities may attempt to pass on the cost of the fee to policyholders, either by a corresponding increase in premiums or by separately charging policyholders for

[2] *See* ACA section 1301(b)(2), referencing section 2791(b) of the PHSA (42 U.S.C. 300gg–91). The definition of health insurance issuer in section 2791(b) of the PHSA is substantially similar to the definition in section 9832(b)(2) of the Code.

a portion of the fee. The preamble to the proposed regulations stated that, under section 61(a), gross income means all income from whatever source derived unless a provision of the Code or other law specifically excludes the payment from gross income. Therefore, a covered entity's gross income includes amounts received from policyholders to offset the cost of the fee, whether or not separately stated on any bill. The preamble requested comments on whether the text of the regulations should be revised to clarify that recovered fee amounts are included in a covered entity's gross income. Numerous commenters disagreed with the preamble statement and requested that the final regulations permit covered entities to exclude from income any amounts collected from policyholders to offset the cost of the fee. One commenter alternatively suggested that the payment of income taxes on the fee should count towards the payment of the fee itself. The final regulations do not adopt these suggestions. The Treasury Department and the IRS will issue separate guidance to clarify that covered entities must include in income under section 61(a) any amounts they collect from policyholders to offset the cost of the fee.

Commenters suggested that the final regulations prohibit a covered entity from collecting amounts to offset the cost of the fee when they collect premiums from excluded entities such as governmental entities and VEBAs. The final regulations do not adopt this suggestion. The health insurance provider, and not the payor of premiums, is liable for the fee. Therefore, any exclusions apply at the health insurance provider level.

A commenter asked if a covered entity must disclose to its policyholders the extent to which the cost of the fee is included in a policyholder's premium. Because the health insurance provider, and not the policyholder, is liable for the fee, the final regulations do not require a covered entity to disclose to its policyholders any amounts included in premiums to offset the cost of the fee, although nothing in the final regulations prohibits a covered entity from disclosing these amounts. However, a covered entity may be subject to State or other Federal rules, if any, regarding disclosures of these amounts.

**Availability of IRS Documents**

The IRS revenue rulings cited in this preamble are published in the Internal Revenue Cumulative Bulletin and are available from the superintendent of Documents, United States Government Printing Office, Washington, DC 20402. The IRS notice cited in this preamble is available at *www.irs.gov.*

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. This regulation merely implements the fee imposed by section 9010 and does not impose the fee itself. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the only collection burden imposed by these regulations is the requirement to maintain a record of consent to the selection of a designated entity, and this collection burden applies only to designated entities of controlled groups, which tend to be large corporations, and their members. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

**Drafting Information**

The principal author of these regulations is Charles J. Langley, Jr., Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

**List of Subjects**

*26 CFR Part 57*

Health insurance, Reporting and recordkeeping requirements.

*26 CFR 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR chapter 1 is amended as follows:

■ **Paragraph 1.** Part 57 is added to read as follows:

## PART 57—HEALTH INSURANCE PROVIDERS FEE

Sec.
57.1 Overview.
57.2 Explanation of terms.
57.3 Reporting requirements and associated penalties.
57.4 Fee calculation.
57.5 Notice of preliminary fee calculation.
57.6 Error correction process.
57.7 Notification and fee payment.
57.8 Tax treatment of fee.
57.9 Refund claims.
57.10 Effective/applicability date.
57.6302–1 Method of paying the health insurance providers fee.

**Authority:** 26 U.S.C. 7805; sec. 9010, Pub. L. 111–148 (124 Stat. 119 (2010)).

Section 57.3 also issued under 26 U.S.C. 6071(a)

Section 57.7 also issued under 26 U.S.C. 6302(a).

Section 57.6302–1 also issued under 26 U.S.C. 6302(a).

### § 57.1 Overview.

(a) The regulations in this part are designated ''Health Insurance Providers Fee Regulations.''

(b) The regulations in this part provide guidance on the annual fee imposed on covered entities engaged in the business of providing health insurance by section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA). All references to section 9010 in this part 57 are references to section 9010 of the ACA. Unless otherwise indicated, all other references to subtitles, chapters, subchapters, and sections are references to subtitles, chapters, subchapters and sections in the Internal Revenue Code and the related regulations.

(c) Section 9010(e)(1) sets an applicable fee amount for each year, beginning with 2014, that will be apportioned among covered entities with aggregate net premiums written over $25 million for health insurance for United States health risks. Generally, each covered entity is liable for a fee in each fee year that is based on its net premiums written during the data year in an amount determined by the Internal Revenue Service (IRS) under the rules of this part.

### § 57.2 Explanation of terms.

(a) *In general.* This section explains the terms used in this part 57 for purposes of the fee.

(b) *Covered entity*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the term *covered entity* means any entity with net premiums written for health insurance for United States health risks in the fee year if the entity is—

(i) A health insurance issuer within the meaning of section 9832(b)(2), defined in section 9832(b)(2) as an insurance company, insurance service, or insurance organization that is licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA));

(ii) A health maintenance organization within the meaning of section 9832(b)(3), defined in section 9832(b)(3) as—

(A) A Federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act);

(B) An organization recognized under State law as a health maintenance organization; or

(C) A similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization;

(iii) An insurance company subject to tax under part I or II of subchapter L, or that would be subject to tax under part I or II of subchapter L but for the entity being exempt from tax under section 501(a);

(iv) An entity that provides health insurance under Medicare Advantage, Medicare Part D, or Medicaid; or

(v) A multiple employer welfare arrangement (MEWA), within the meaning of section 3(40) of ERISA, to the extent not fully insured, provided that for this purpose a covered entity does not include a MEWA that with respect to the plan year ending with or within the section 9010 data year satisfies the requirements to be exempt from reporting under 29 CFR 2520.101–2(c)(2)(ii)(A), (B), or (C).

(2) *Exclusions*—(i) *Self-insured employer.* The term *covered entity* does not include any entity (including a voluntary employees' beneficiary association under section 501(c)(9) (VEBA)) that is part of a self-insured employer plan to the extent that such entity self-insures its employees' health risks. The term *self-insured employer* means an employer that sponsors a self-insured medical reimbursement plan within the meaning of § 1.105–11(b)(1)(i) of this chapter. Self-insured medical reimbursement plans include plans that do not involve shifting risk to an unrelated third party as described in § 1.105–11(b)(1)(ii) of this chapter. A self-insured medical reimbursement plan may use an insurance company or other third party to provide administrative or bookkeeping functions. For purposes of this section, the term *self-insured employer* does not include a MEWA.

(ii) *Governmental entity.* The term *covered entity* does not include any governmental entity. For this purpose, the term *governmental entity* means—

(A) The government of the United States;

(B) Any State or a political subdivision thereof (as defined for purposes of section 103) including, for example, a State health department or a State insurance commission;

(C) Any Indian tribal government (as defined in section 7701(a)(40)) or a subdivision thereof (determined in accordance with section 7871(d)); or

(D) Any agency or instrumentality of any of the foregoing.

(iii) *Certain nonprofit corporations.* The term *covered entity* does not include any entity—

(A) That is incorporated as a nonprofit corporation under a State law;

(B) No part of the net earnings of which inures to the benefit of any private shareholder or individual (within the meaning of §§ 1.501(a)–1(c) and 1.501(c)(3)–1(c)(2) of this chapter);

(C) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (within the meaning of § 1.501(c)(3)–1(c)(3)(ii) of this chapter) (or which is described in section 501(h)(3) and is not denied exemption under section 501(a) by reason of section 501(h));

(D) That does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office (within the meaning of § 1.501(c)(3)–1(c)(3)(iii) of this chapter); and

(E) More than 80 percent of the gross revenues of which is received from government programs that target low-income, elderly, or disabled populations under titles XVIII, XIX, and XXI of the Social Security Act.

(iv) *Certain voluntary employees' beneficiary associations (VEBAs).* The term *covered entity* does not include any entity that is described in section 501(c)(9) that is established by an entity (other than by an employer or employers) for purposes of providing health care benefits. This exclusion applies to a VEBA that is established by a union or established pursuant to a collective bargaining agreement and having a joint board of trustees (such as in the case of a multiemployer plan within the meaning of section 3(37) of ERISA or a single-employer plan described in section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. 186(c)(5)). This exclusion does not apply to a MEWA.

(3) *State.* Solely for purposes of paragraph (b) of this section, the term *State* means any of the 50 States, the District of Columbia, or any of the possessions of the United States, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

(c) *Controlled groups*—(1) *In general.* The term *controlled group* means a group of two or more persons, including at least one person that is a covered entity, that is treated as a single employer under section 52(a), 52(b), 414(m), or 414(o).

(2) *Treatment of controlled group.* A controlled group (as defined in paragraph (c)(1) of this section) is treated as a single covered entity for purposes of the fee.

(3) *Special rules.* For purposes of paragraph (c)(1) of this section (related to controlled groups)—

(i) A foreign entity subject to tax under section 881 is included within a controlled group under section 52(a) or (b); and

(ii) A person is treated as being a member of the controlled group if it is a member of the group at the end of the day on December 31st of the data year.

(d) *Data year.* The term *data year* means the calendar year immediately before the fee year. Thus, for example, 2013 is the data year for fee year 2014.

(e) *Designated entity*—(1) *In general.* The term *designated entity* means the person within a controlled group that is designated to act on behalf of the controlled group regarding the fee with respect to—

(i) Filing Form 8963, ''Report of Health Insurance Provider Information'';

(ii) Receiving IRS communications about the fee for the group;

(iii) Filing a corrected Form 8963 for the group, if applicable, as described in § 57.6; and

(iv) Paying the fee for the group to the government.

(2) *Selection of designated entity*—(i) *In general.* Except as provided in paragraph (e)(2)(ii) of this section, each controlled group must select a designated entity by having that entity file the Form 8963 in accordance with the form instructions. The designated entity must state under penalties of perjury that all persons that provide health insurance for United States health risks that are members of the

group have consented to the selection of the designated entity. Each member of a controlled group must maintain a record of its consent to the controlled group's selection of the designated entity. The designated entity must maintain a record of all member consents.

(ii) *Requirement for consolidated groups; common parent.* If a controlled group, without regard to foreign corporations included under section 9010(c)(3)(B), is also an affiliated group the common parent of which files a consolidated return for Federal income tax purposes, the designated entity is the agent for the group (within the meaning of § 1.1502–77 of this chapter) for the data year.

(iii) *Failure to select a designated entity.* Excepted as provided in paragraph (e)(2)(ii) of this section, if a controlled group fails to select a designated entity as provided in paragraph (e)(2)(i) of this section, then the IRS will select a member of the controlled group to be the designated entity. If the IRS selects the designated entity, then all members of the controlled group that provide health insurance for a United States health risk will be deemed to have consented to the IRS's selection of the designated entity.

(f) *Fee.* The term *fee* means the fee imposed by section 9010 on each covered entity engaged in the business of providing health insurance.

(g) *Fee year.* The term *fee year* means the calendar year in which the fee must be paid to the government. The first fee year is 2014.

(h) *Health insurance*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, the term *health insurance* generally has the same meaning as the term *health insurance coverage* in section 9832(b)(1)(A), defined to mean benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, when these benefits are offered by an entity that is one of the types of entities described in paragraph (b)(1)(i) through (b)(1)(v) of this section. The term *health insurance* includes limited scope dental and vision benefits under section 9832(c)(2)(A) and retiree-only health insurance.

(2) *Exclusions.* The term *health insurance* does not include—

(i) Coverage only for accident, or disability income insurance, or any combination thereof, within the meaning of section 9832(c)(1)(A);

(ii) Coverage issued as a supplement to liability insurance within the meaning of section 9832(c)(1)(B);

(iii) Liability insurance, including general liability insurance and automobile liability insurance, within the meaning of section 9832(c)(1)(C);

(iv) Workers' compensation or similar insurance within the meaning of section 9832(c)(1)(D);

(v) Automobile medical payment insurance within the meaning of section 9832(c)(1)(E);

(vi) Credit-only insurance within the meaning of section 9832(c)(1)(F);

(vii) Coverage for on-site medical clinics within the meaning of section 9832(c)(1)(G);

(viii) Other insurance coverage that is similar to the insurance coverage in paragraph (h)(2)(i) through (vii) of this section under which benefits for medical care are secondary or incidental to other insurance benefits, within the meaning of section 9832(c)(1)(H), to the extent such insurance coverage is specified in regulations under section 9832(c)(1)(H);

(ix) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof, within the meaning of section 9832(c)(2)(B), and such other similar, limited benefits to the extent such benefits are specified in regulations under section 9832(c)(2)(C);

(x) Coverage only for a specified disease or illness within the meaning of section 9832(c)(3)(A);

(xi) Hospital indemnity or other fixed indemnity insurance within the meaning of section 9832(c)(3)(B);

(xii) Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under a group health plan, within the meaning of section 9832(c)(4);

(xiii) Coverage under an employee assistance plan, a disease management plan, or a wellness plan, if the benefits provided under the plan constitute excepted benefits under section 9832(c)(2) (or do not otherwise provide benefits consisting of health insurance under paragraph (h)(1) of this section);

(xiv) Student administrative health fee arrangements, as defined in paragraph (h)(3);

(xv) Travel insurance, as defined in paragraph (h)(4) of this section; or

(xvi) Indemnity reinsurance, as defined in paragraph (h)(5)(i) of this section.

(3) *Student administrative health fee arrangement.* For purposes of paragraph (h)(2)(xiv) of this section, the term *student administrative health fee arrangement* means an arrangement under which an educational institution, other than through an insured arrangement, charges student administrative health fees to students on a periodic basis to help cover the cost of student health clinic operations and care delivery (regardless of whether the student uses the clinic and regardless of whether the student purchases any available student health insurance coverage).

(4) *Travel insurance.* For purposes of paragraph (h)(2)(xv) of this section, the term *travel insurance* means insurance coverage for personal risks incident to planned travel, which may include, but is not limited to, interruption or cancellation of trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel, provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverage. For this purpose, the term *travel insurance* does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including, for example, those working overseas as an expatriate or military personnel being deployed.

(5) *Reinsurance*—(i) *Indemnity reinsurance.* For purposes of paragraphs (h)(2)(xvi) and (k) of this section, the term *indemnity reinsurance* means an agreement between one or more reinsuring companies and a covered entity under which—

(A) The reinsuring company agrees to accept, and to indemnify the issuing company for, all or part of the risk of loss under policies specified in the agreement; and

(B) The covered entity retains its liability to, and its contractual relationship with, the individuals whose health risks are insured under the policies specified in the agreement.

(ii) *Assumption reinsurance.* For purposes of paragraph (k) of this section, the term *assumption reinsurance* means reinsurance for which there is a novation and the reinsurer takes over the entire risk of loss pursuant to a new contract.

(i) *Located in the United States.* The term *located in the United States* means present in the United States (within the meaning of paragraph (m) of this section) under section 7701(b)(7) (for presence in the 50 States and the District of Columbia) or § 1.937–

1(c)(3)(i) of this chapter (for presence in a possession of the United States).

(j) *NAIC.* The term *NAIC* means the National Association of Insurance Commissioners.

(k) *Net premiums written*—The term *net premiums written* means premiums written, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions and medical loss ratio (MLR) rebates with respect to the data year. For this purpose, MLR rebates are computed on an accrual basis in determining net premiums written. Because indemnity reinsurance within the meaning of paragraph (h)(5)(i) of this section is not health insurance under paragraph (h)(1) of this section, the term *net premiums written* does not include premiums written for indemnity reinsurance and is not reduced by indemnity reinsurance ceded. However, in the case of assumption reinsurance within the meaning of paragraph (h)(5)(ii) of this section, the term *net premiums written* does include premiums written for assumption reinsurance and is reduced by assumption reinsurance premiums ceded.

(l) *SHCE.* The term *SHCE* means the Supplemental Health Care Exhibit. The SHCE is a form published by the NAIC that most covered entities are required to file annually under State law.

(m) *United States.* For purposes of paragraph (i) of this section, the term *United States* means the 50 States, the District of Columbia, and any possession of the United States, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

(n) *United States health risk.* The term *United States health risk* means the health risk of any individual who is—

(1) A United States citizen;

(2) A resident of the United States (within the meaning of section 7701(b)(1)(A)); or

(3) Located in the United States (within the meaning of paragraph (i) of this section) during the period such individual is so located.

**§ 57.3 Reporting requirements and associated penalties.**

(a) *Reporting requirement*—(1) *In general.* Annually, each covered entity, including each controlled group that is treated as a single covered entity, must report its net premiums written for health insurance of United States health risks during the data year to the IRS by April 15th of the fee year on Form 8963, ''Report of Health Insurance Provider Information,'' in accordance with the instructions for the form. A covered entity that has net premiums written during the data year is subject to this reporting requirement even if it does not have any amount taken into account as described in § 57.4(a)(4). If an entity is not in the business of providing health insurance for any United States health risk in the fee year, it is not a covered entity and does not have to report.

(2) *Manner of reporting.* The IRS may provide rules in guidance published in the Internal Revenue Bulletin for the manner of reporting by a covered entity under this section, including rules for reporting by a designated entity on behalf of a controlled group that is treated as a single covered entity.

(3) *Disclosure of reported information.* Pursuant to section 9010(g)(4), the information reported on each original and corrected Form 8963 will be open for public inspection or available upon request.

(b) *Penalties*—(1) *Failure to report*—(i) *In general.* A covered entity that fails to timely submit a report containing the information required by paragraph (a) of this section is liable for a failure to report penalty in the amount described in paragraph (b)(1)(ii) of this section in addition to its fee liability and any other applicable penalty, unless the failure is due to reasonable cause as defined in paragraph (b)(1)(iii) of this section.

(ii) *Amount.* The amount of the failure to report penalty described in paragraph (b)(1)(i) of this section is—

(A) $10,000, plus

(B) The lesser of—

(*1*) An amount equal to $1,000 multiplied by the number of days during which such failure continues; or

(*2*) The amount of the covered entity's fee for which the report was required.

(iii) *Reasonable cause.* The failure to report penalty described in paragraph (b)(1)(i) of this section is waived if the failure is due to reasonable cause. A failure is due to reasonable cause if the covered entity exercised ordinary business care and prudence and was nevertheless unable to submit the report within the prescribed time. In determining whether the covered entity was unable to submit the report timely despite the exercise of ordinary business care and prudence, the IRS will consider all the facts and circumstances surrounding the failure to submit the report.

(iv) *Treatment of penalty.* The failure to report penalty described in this paragraph (b)(1)—

(A) Is treated as a penalty under subtitle F;

(B) Must be paid on notice and demand by the IRS and in the same manner as a tax under the Internal Revenue Code; and

(C) Is a penalty for which only civil actions for refund under procedures of subtitle F apply.

(2) *Accuracy-related penalty*—(i) *In general.* A covered entity that understates its net premiums written for health insurance of United States health risks in the report required under paragraph (a)(1) of this section is liable for an accuracy-related penalty in the amount described in paragraph (b)(2)(ii) of this section, in addition to its fee liability and any other applicable penalty.

(ii) *Amount.* The amount of the accuracy-related penalty described in paragraph (b)(2)(i) of this section is the excess of—

(A) The amount of the covered entity's fee for the fee year that the IRS determines should have been paid in the absence of any understatement; over

(B) The amount of the covered entity's fee for the fee year that the IRS determined based on the understatement.

(iii) *Understatement.* An understatement of a covered entity's net premiums written for health insurance of United States health risks is the difference between the amount of net premiums written that the covered entity reported and the amount of net premiums written that the IRS determines the covered entity should have reported.

(iv) *Treatment of penalty.* The accuracy-related penalty is subject to the provisions of subtitle F that apply to assessable penalties imposed under chapter 68.

(3) *Controlled groups.* Each member of a controlled group that is required to provide information to the controlled group's designated entity for purposes of the report required to be submitted by the designated entity on behalf of the controlled group is jointly and severally liable for any penalties described in this paragraph (b) for any reporting failures by the designated entity.

**§ 57.4 Fee calculation.**

(a) *Fee components*—(1) *In general.* For every fee year, the IRS will calculate a covered entity's allocated fee as described in this section.

(2) *Calculation of net premiums written.* Each covered entity's allocated fee for any fee year is equal to an amount that bears the same ratio to the applicable amount as the covered entity's net premiums written for health insurance of United States health risks during the data year taken into account bears to the aggregate net premiums written for health insurance of United States health risks of all covered entities during the data year taken into account.

(3) *Applicable amount.* The applicable amounts for fee years are—

| Fee year | Applicable amount |
|---|---|
| 2014 | $8,000,000,000 |
| 2015 | $11,300,000,000 |
| 2016 | $11,300,000,000 |
| 2017 | $13,900,000,000 |
| 2018 | $14,300,000,000 |
| 2019 and thereafter | The applicable amount in the preceding fee year increased by the rate of premium growth (within the meaning of section 36B(b)(3)(A)(ii)). |

(4) *Net premiums written taken into account*—(i) *In general.* A covered entity's net premiums written for health insurance of United States health risks during any data year are taken into account as follows:

| Covered entity's net premiums written during the data year that are: | Percentage of net premiums written taken into account is: |
|---|---|
| Not more than $25,000,000 | 0 |
| More than $25,000,000 but not more than $50,000,000 | 50 |
| More than $50,000,000 | 100 |

(ii) *Controlled groups.* In the case of a controlled group, paragraph (a)(4)(i) of this section applies to all net premiums written for health insurance of United States health risks during the data year, in the aggregate, of the entire controlled group, except that any net premiums written by any member of the controlled group that is a nonprofit corporation meeting the requirements of § 57.2(b)(2)(iii) or a voluntary employees' beneficiary association meeting the requirements of § 57.2(b)(2)(iv) are not taken into account.

(iii) *Partial exclusion for certain exempt activities.* After the application of paragraph (a)(4)(i) of this section, if the covered entity (or any member of a controlled group treated as a single covered entity) is exempt from Federal income tax under section 501(a) and is described in section 501(c)(3), (4), (26), or (29) as of December 31st of the data year, then only 50 percent of its remaining net premiums written for health insurance of United States health risks that are attributable to its exempt activities (and not to activities of an unrelated trade or business as defined in section 513) during the data year are taken into account. If an entity to which this partial exclusion applies is a member of a controlled group, then the partial exclusion applies to that entity after first applying paragraph (a)(4)(i) on a pro rata basis to all members of the controlled group.

(b) *Determination of net premiums written*—(1) *In general.* The IRS will determine net premiums written for health insurance of United States health risks for each covered entity based on the Form 8963, ''Report of Health Insurance Provider Information,'' submitted by each covered entity, together with any other source of information available to the IRS. Other sources of information that the IRS may use to determine net premiums written for each covered entity include the SHCE, which supplements the annual statement filed with the NAIC pursuant to State law, the annual statement itself or the Accident and Health Policy Experience filed with the NAIC, the MLR Annual Reporting Form filed with the Center for Medicare & Medicaid Services' Center for Consumer Information and Insurance Oversight of the U.S. Department of Health and Human Services, or any similar statements filed with the NAIC, with any State government, or with the Federal government pursuant to applicable State or Federal requirements.

(2) *Presumption for United States health risks.* For any covered entity that files the SHCE with the NAIC, the entire amount reported on the SHCE as direct premiums written will be considered to be for health insurance of United States health risks as described in § 57.2(n) (subject to any applicable exclusions for amounts that are not health insurance as described in § 57.2(h)(2)) unless the covered entity can demonstrate otherwise.

(c) *Determination of amounts taken into account.* (1) For each fee year and for each covered entity, the IRS will calculate the net premiums written for health insurance of United States health risks taken into account during the data year. The resulting number is the numerator of the fraction described in paragraph (d)(1) of this section.

(2) For each fee year, the IRS will calculate the aggregate net premiums written for health insurance of United States health risks taken into account for all covered entities during the data year. The resulting number is the denominator of the fraction described in paragraph (d)(2) of this section.

(d) *Allocated fee calculated.* For each covered entity for each fee year, the IRS will calculate the covered entity's allocated fee by multiplying the applicable amount from paragraph (a)(3) of this section by a fraction—

(1) The numerator of which is the covered entity's net premiums written for health insurance of United States health risks during the data year taken into account (described in paragraph (c)(1) of this section); and

(2) The denominator of which is the aggregate net premiums written for health insurance of United States health risks for all covered entities during the data year taken into account (described in paragraph (c)(2) of this section).

**§ 57.5 Notice of preliminary fee calculation.**

(a) *Content of notice.* Each fee year, the IRS will make a preliminary calculation of the fee for each covered entity as described in § 57.4. The IRS will notify each covered entity of its preliminary fee calculation for that fee year. The notification to a covered entity of its preliminary fee calculation will include—

(1) The covered entity's allocated fee;

(2) The covered entity's net premiums written for health insurance of United States health risks;

(3) The covered entity's net premiums written for health insurance of United

States health risks taken into account after the application of § 57.4(a)(4);

(4) The aggregate net premiums written for health insurance of United States health risks taken into account for all covered entities; and

(5) Instructions for how to submit a corrected Form 8963, ''Report of Health Insurance Provider Information,'' to correct any errors through the error correction process.

(b) *Timing of notice.* The IRS will specify in other guidance published in the Internal Revenue Bulletin the date by which it will send each covered entity a notice of its preliminary fee calculation.

**§ 57.6 Error correction process.**

(a) *In general.* Upon receipt of its preliminary fee calculation, each covered entity must review this calculation during the error correction period. If the covered entity identifies one or more errors in its preliminary fee calculation, the covered entity must timely submit to the IRS a corrected Form 8963, ''Report of Health Insurance Provider Information,'' during the error correction period. The corrected Form 8963 will replace the original Form 8963 for all purposes, including for the purpose of determining whether an accuracy-related penalty applies, except that a covered entity remains subject to the failure to report penalty if it fails to timely submit the original Form 8963. In the case of a controlled group, if the preliminary fee calculation for the controlled group contains one or more errors, the corrected Form 8963 must include all of the required information for the entire controlled group, including members that do not have corrections.

(b) *Time and manner.* The IRS will specify in other guidance published in the Internal Revenue Bulletin the time and manner by which a covered entity must submit a corrected Form 8963. The IRS will provide its final determination regarding the covered entity's submission no later than the time the IRS provides a covered entity with a final fee calculation.

(c) *Finality.* Covered entities must assert any basis for contesting their preliminary fee calculation during the error correction period. In the interest of providing finality to the fee calculation process, the IRS will not accept a corrected Form 8963 after the end of the error correction period or alter final fee calculations on the basis of information provided after the end of the error correction period.

**§ 57.7 Notification and fee payment.**

(a) *Content of notice.* Each fee year, the IRS will make a final calculation of the fee for each covered entity as described in § 57.4. The IRS will base its final fee calculation on each covered entity's original or corrected Form 8963, ''Report of Health Insurance Provider Information,'' as adjusted by other sources of information described in § 57.4(b)(1). The notification to a covered entity of its final fee calculation will include—

(1) The covered entity's allocated fee;

(2) The covered entity's net premiums written for health insurance of United States health risks;

(3) The covered entity's net premiums written for health insurance of United States health risks taken into account after the application of § 57.4(a)(4);

(4) The aggregate net premiums written for health insurance of United States health risks taken into account for all covered entities; and

(5) The final determination on the covered entity's corrected Form 8963, ''Report of Health Insurance Provider Information,'' if any.

(b) *Timing of notice.* The IRS will send each covered entity a notice of its final fee calculation by August 31st of the fee year.

(c) *Differences in preliminary fee calculation and final calculation.* A covered entity's final fee calculation may differ from the covered entity's preliminary fee calculation because of changes made pursuant to the error correction process described in § 57.6 or because the IRS discovered additional information relevant to the fee calculation through other information sources as described in § 57.4(b)(1). Even if a covered entity did not file a corrected Form 8963 described in § 57.6, a covered entity's final fee may differ from a covered entity's preliminary fee because of information discovered about that covered entity through other information sources. In addition, a change in aggregate net premiums written for health insurance of United States health risks can affect every covered entity's fee because each covered entity's fee is equal to a fraction of the aggregate fee collected from all covered entities.

(d) *Payment of final fee.* Each covered entity must pay its final fee by September 30th of the fee year. For a controlled group, the payment must be made using the designated entity's Employer Identification Number as reported on Form 8963. The fee must be paid by electronic funds transfer as required by § 57.6302–1. There is no tax return to be filed with the payment of the fee.

(e) *Controlled groups.* In the case of a controlled group that is liable for the fee, all members of the controlled group are jointly and severally liable for the fee. Accordingly, if a controlled group's fee is not paid, the IRS may separately assess each member of the controlled group for the full amount of the controlled group's fee.

**§ 57.8 Tax treatment of fee.**

(a) *Treatment as an excise tax.* The fee is treated as an excise tax for purposes of subtitle F (sections 6001–7874). Thus, references in subtitle F to ''taxes imposed by this title,'' ''internal revenue tax,'' and similar references, are also references to the fee. For example, the fee is assessed (section 6201), collected (sections 6301, 6321, and 6331), enforced (section 7602), and subject to examination and summons (section 7602) in the same manner as taxes imposed by the Code.

(b) *Deficiency procedures.* The deficiency procedures of sections 6211–6216 do not apply to the fee.

(c) *Limitation on assessment.* The IRS must assess the amount of the fee for any fee year within three years of September 30th of that fee year.

(d) *Application of section 275.* The fee is treated as a tax described in section 275(a)(6) (relating to taxes for which no deduction is allowed).

**§ 57.9 Refund claims.**

Any claim for a refund of the fee must be made by the entity that paid the fee to the government and must be made on Form 843, ''Claim for Refund and Request for Abatement,'' in accordance with the instructions for that form.

**§ 57.10 Effective/applicability date.**

Sections 57.1 through 57.9 apply to any fee that is due on or after September 30, 2014.

**§ 57.6302–1 Method of paying the health insurance providers fee.**

(a) *Fee to be paid by electronic funds transfer.* Under the authority of section 6302(a), the fee imposed on covered entities engaged in the business of providing health insurance for United States health risks under section 9010 and § 57.4 must be paid by electronic funds transfer as defined in § 31.6302–1(h)(4)(i) of this chapter, as if the fee were a depository tax. For the time for paying the fee, see § 57.7.

(b) *Effective/Applicability date.* This section applies with respect to any fee that is due on or after September 30, 2014.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 2.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 3.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR Part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * | |
| 57.2(e)(2)(i) ..... | 1545–2249 |
| * * * * | |

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: November 13, 2013.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2013–28412 Filed 11–26–13; 4:15 pm]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2013–0917]**

**RIN 1625–AA00**

## Special Local Regulation; Lake Havasu City Christmas Boat Parade of Lights; Colorado River; Lake Havasu, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily modifying the dates for the special local regulation in support of the Lake Havasu City Christmas Boat Parade of Lights on the Colorado River. This modification is necessary to reflect the actual dates of the event for this year which are December 6th and December 7th, 2013. Additionally, this temporary final rule adds a third evening, December 14th, 2013. This rule is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 5 p.m. to 9 p.m. on December 6th, December 7th, and December 14th, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0917]. 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 Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7656, email *d11marineeventssd@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

BNM Broadcast Notices to Mariners
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because logistical details pertaining to this year's dates were not known by the Coast Guard in time to publish an NPRM and wait for the comment period to run.

Immediate action is needed to ensure the special local regulations listed in 33 CFR 100.1102 (table 1, item 10) will be in effect on the actual dates of the event, which are December 6th, December 7th, and December 14th, 2013.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would be contrary to the public interest, because immediate action is necessary to protect the parade vessels from the dangers associated with non participant vessels transiting the event area.

### B. Basis and Purpose

The legal basis and authorities for this rulemaking establishing a special local regulation are found in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations.

This temporary final rule and notice of enforcement will protect the participating vessels over the three evenings in December in a marine event sponsored by the London Bridge Yacht Club.

The annual Lake Havasu City Christmas Boat Parade of Lights will involve fifty vessels in Lake Havasu, AZ transiting Thompson Bay, proceeding through Bridgewater Channel, circling in front of Windsor Beach and returning through Bridgewater Channel. The regulated zone will encompass the navigable waters in the northern portion of Thompson Bay, the Bridgewater Channel, and waters off Windsor Beach. Vessel participants will be traveling in a parade line that will affect normal traffic patterns. In addition, event participants will be utilizing additional holiday lighting that will obscure or confuse required normal Navigation Lights and increase the dangers associated with non participating vessels transiting the area.

This temporary special local regulation is necessary to prevent vessels from transiting the area and to protect the participating vessels and passengers from potential damage and injury.

### C. Discussion of the Final Rule

The Coast Guard is changing the dates of the special local regulation currently listed in 33 CFR 100.1102 (table 1, item 10). This change differs from the existing regulation by specifying that the event will be held on December 6, December 7 and December 14, 2013, instead of the first weekend in December. The special local regulations for the Lake Havasu City Christmas Boat Parade of Lights will be enforced from 5 p.m. to 9 p.m. on Friday, December 6,

2013; Saturday, December 7, 2013 and Saturday December 14, 2013. The special local regulation zone will encompass the waters in the northern portion of Thompson Bay, the Bridgewater Channel, and waters off Windsor Beach. The zone is necessary to provide for the safety of the spectators, participants, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this zone unless authorized by the Captain of the Port, or his designated representative. Persons or vessels requiring entry into or passage through the special local regulation must request permission from the Captain of the Port, or his designated representative. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the zone. Commercial vessels will not be hindered by the zone. Recreational vessels will not be allowed to transit through the designated zone during the specified times.

*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 rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portion of Lake Havasu from 5 p.m. to 9 p.m. on December 6, 7, and 14, 2013.

These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only in the evening when vessel traffic is low. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a special local regulation, upon the navigable waters of Lake Havasu. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. 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 100**

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

For the reasons discussed in the preamble, the U.S. Coast Guard amends 33 CFR Part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Suspend item 10 in Table 1 of § 100.1102.

■ 3. Add § 100.T11–607 to read as follows:

**§ 100.T11–607 Special Local Regulation; Lake Havasu City Christmas Boat Parade of Lights; Colorado River; Lake Havasu, AZ.**

(a) *Location.* The following area is a special local regulation: The waters in the northern portion of Thompson Bay, the Bridgewater Channel, and waters off Windsor Beach.

(b) *Enforcement Period.* This section will be enforced from 5 p.m. to 9 p.m. on December 6, 7, and 14, 2013.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into this area is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel or designated law enforcement representatives by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: November 6, 2013.

**S. M. Mahoney,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2013–28583 Filed 11–27–13; 8:45 am]

BILLING CODE 9110–04–P

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0956]**

**RIN 1625–AA11**

## Regulated Navigation Area; Portsmouth Naval Shipyard, Piscataqua River, Portsmouth, NH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) on the Piscataqua River near Portsmouth, NH. This temporary final rule places speed restrictions on all vessels transiting the navigable waters of the Piscataqua River, Portsmouth, NH near the Portsmouth Naval Shipyard between Henderson Point Light on Seavey Island and Badgers Island Buoy 14. This rule is necessary to provide for the safety of life on the navigable waters during ongoing dive operations.

**DATES:** This rule is effective without actual notice from November 29, 2013 until 5:00 p.m. on December 6, 2013. For the purposes of enforcement, actual notice will be used from 7:00 a.m. on November 21, 2013 until November 29, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of Docket Number USCG–2013–0956. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Elizabeth V. Morris, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207–767–0398, email *Elizabeth.V.Morris@uscg.mil;* or Lieutenant Myles Greenway, Waterways Management at Coast Guard First District, telephone 617–223–8385, email *Myles.J.Greenway@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
RNA Regulated Navigation Area

**A. Regulatory History and Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was not notified of the need for this rule until 31 October 2013, and the Portsmouth Naval Facility will begin diving operations in this area within a short timeframe making publication of a NPRM and Final Rule impracticable.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** For the reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable.

**B. Basis and Purpose**

Under the Ports and Waterways Safety Act, 33 U.S.C. 1221 et. seq., the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

As part of ongoing ship construction projects at the Portsmouth Naval Shipyard, divers will be working on the hull of a vessel for approximately two weeks beginning on November 21, 2013. Unexpected and uncontrolled movement of the vessel due to wake while divers are in the water would create a significant risk of serious injury or death to vessel workers and divers. In order to ensure the safety of vessel workers and divers during the period of ship construction work, the Coast Guard is creating a regulated navigation area to limit the speed, and thus wake, of all vessels operating in the vicinity of the shipyard.

**C. Discussion of Rule**

This action will establish a temporary Regulated Navigation Area that places speed restrictions on all vessels transiting the navigable waters on the Piscataqua River, Portsmouth, NH near the Portsmouth Naval Shipyard between Henderson Point Light on Seavey Island and Badgers Island Buoy 14 when necessary for the safety of navigation during periods of dive operations. All vessels operating in this area must proceed with caution; operate at no more than 5 knots and in a manner so as to produce no wake. Diving operations and other vessel construction may occur at any time, day or night. This regulated navigation area will provide for the safety of the divers and others working in the area as wake from passing vessels could cause the ship to move erratically and unexpectedly, injuring the divers and their support crews.

The Captain of the Port Sector Northern New England will cause notice of enforcement or suspension of enforcement of this regulated navigation area to be made by all appropriate means in order to affect the widest distribution among the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. In addition, Captain of the Port Sector Northern New England maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the regulated navigation area by contacting Sector Northern New England Command Center at (207) 767–0303.

**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 these Orders.

The Coast Guard determined that this rulemaking will not be a significant regulatory action for the following reasons: vessel traffic will only be required to operate at no-wake speeds within the RNA and the RNA covers only a small portion of the navigable waterway. Advanced public notifications will also be made to local mariners through appropriate means, which might include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the portion of the Piscataqua River affected by this rule between August 5, 2011 and September 5, 2011.

This RNA will not have a significant economic impact on a substantial number of small entities for all the reasons discussed in the *Regulatory Planning and Review* section above.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children 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 will not create an environmental risk to health or risk to safety that might disproportionately affect children.

*11. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because it involves the establishing of a regulated navigation area. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 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.T01–0956 to read as follows:

### § 165.T01–0956 Regulated Navigation Area; Portsmouth Naval Shipyard, Piscataqua River, Portsmouth, NH.

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters, surface to bottom, on the Piscataqua River, Portsmouth, NH and Kittery, ME near the Portsmouth Naval Shipyard between 43°04′29.319″ N, 070°44′10.189″ W (Henderson Point Light 10, LLNR 8375) on Seavey Island and 43°04′51.951″ N, 070°45′21.518″ W (Badgers Island Buoy 14, LLNR 8405).

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

(2) In accordance with the general regulations, the following restrictions apply to all vessels operating within the regulated area noted above.

(i) No vessel may operate in this regulated area at a speed in excess of five knots.

(ii) All vessels must proceed through the area with caution and operate in such a manner as to produce no wake.

(iii) Vessels operating within the regulated navigation area must comply with all directions given to them by the Captain of the Port Sector Northern New England or his on-scene representative.

(iv) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, State Marine Patrol vessel or other designated craft, or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary or Naval Harbor Security Patrol may be present to inform vessel operators of this regulation.

(v) For purposes of navigational safety, the Captain of the Port or on-scene representative may authorize a deviation from this regulation.

(c) *Effective and enforcement period.* (1) This regulated navigation area is effective and will be enforced from 7:00 a.m. on November 21, 2013 until 5:00 p.m. on December 6, 2013.

(2) Notice of suspension of enforcement: The Captain of the Port Sector Northern New England may temporarily suspend enforcement of the regulated navigation area. If enforcement of the zone is temporarily suspended, the Captain of the Port Sector Northern New England will cause a notice of the suspension of enforcement of this regulated navigation area to be made by all appropriate means. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(3) Violations of this regulated navigation area should be reported to the Captain of the Port Sector Northern New England, at (207) 767–0303 or on VHF-Channel 16. Persons in violation of this regulated navigation area may be subject to civil and/or criminal penalties.

Dated: November 15, 2013.

**V.B. Gifford,**

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

[FR Doc. 2013–28609 Filed 11–27–13; 8:45 am]

BILLING CODE 9110–04–P

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 201**

**[Docket No. 2012–1]**

## Copyright Office Fees: Cable and Satellite Statement of Account Fees

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Copyright Office (''Office'') is publishing a final rule establishing a fee schedule for filing cable and satellite statements of account pursuant to Sections 112, 119, and 122 of Title 17 of the United States Code (''SOAs'') in accordance with the Satellite Television Extension and Localism Act of 2010 (''STELA''). The Office is establishing these SOA fees after taking into account public comments received in response to the Office's March 28, 2012 Notice of Proposed Rulemaking and December 6, 2012 Notice of Proposed Rulemaking.

**DATES:** This rule is effective January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, or Catherine R. Rowland, Senior Counsel for Policy and International Affairs, at the U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Office is charged with administering certain statutory licenses established under the Copyright Act, 17 U.S.C. 101 et seq. (''Act''), including fees for filing and processing cable and satellite SOAs pursuant to Sections 111 and 119. Previously, as permitted under the Act, the Office covered its administrative costs for processing these SOAs by charging the costs against the collected royalties. In 2010, however, Congress enacted STELA, amending the law to allow the Office to apportion the fees between copyright owners and statutory licensees. The Act requires that the fees assessed for filing SOAs ''shall be reasonable and may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account and any royalty fees deposited with such statements.'' [1]

In light of the statutory change, the Office undertook a cost study of its Licensing Division, which processes SOAs, and issued a Notice of Proposed Rulemaking on March 28, 2012 (''First NPR'').[2] The First NPR suggested a three-tiered fee schedule for cable filings, with fees corresponding to the different types of cable SOAs (the three SOA forms are known as SA1, SA2, and SA3). Thus, the First NPR proposed the following SOA fees: $15 for licensees who file an SA1 form; $20 for licensees who file an SA2 form (slightly higher due to the somewhat greater review involved); and $500 for licensees who file the SA3 form (substantially higher due to the complex nature of the Office's review and administration of SA3 filings). Additionally, the First NPR proposed a $75 fee for satellite SOAs, reflecting the fact that these forms require attention beyond that needed for SA1 and SA2 forms.

The Office received three comments addressing the First NPR's proposed cable and satellite SOA fees. These comments were submitted by the American Cable Association (''ACA''); the National Cable & Telecommunications Association (''NCTA''); and jointly by Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants Group, National Public Radio, Broadcaster Claimants Group, and Devotional Claimants (collectively, the ''Copyright Owners''). NCTA expressed the concern that the proposed fees sought to recover costs for services ''that go beyond what is reasonably necessary to administer the license.'' ACA requested that the Office provide a waiver of fees for cable operators experiencing financial hardship. Copyright Owners argued that the proposed fees failed to recover enough of the operating costs of the cable and satellite program.

In light of the comments received, and because the fees for the filing of cable and satellite SOAs were being set for the first time, the Office conducted a further analysis of the costs of administering the SOAs and published an updated fee schedule in a second Notice of Public Rulemaking on December 6, 2012 (''Second NPR'').[3] The Second NPR explained that the Office had conducted an additional cost study to address commenter concerns regarding cable and satellite SOA fees. As discussed below, the Office determined that its original review of costs in relation to the Licensing Division—using a methodology that differed to some degree from its approach to other fee services in the Office unrelated to SOA fees—did not sufficiently reflect all of the costs incurred in the complex task of processing cable and satellite SOAs.[4] To more completely assess the costs, the Office thus decided to conduct a second study using the more typical methodology, which captures administrative overhead, among other things.[5]

In the second Licensing Division cost study, the Office found that many costs are common to both cable and satellite filings—in particular the fiscal management and information technology costs—and thus should be shared by both types of filers.[6] The Office proposed a modified fee schedule for cable and satellite SOA fees that better reflected the overall costs of the licensing program. Specifically, while the Office proposed to keep the recommended fees for SA1 and SA2 forms set forth in the First NPR ($15 and $20, respectively), it determined that fees for SA3 forms should be increased from $500 to $725.[7] The Office further proposed to increase the fee for processing SOAs for satellite retransmissions from $75 to $725. While these fees included significant increases to certain fees initially proposed in the First NPR, the Office believed that they better captured the full costs associated with the management of these SOAs.

Lastly, in the Second NPR the Office declined to adopt a hardship waiver for SOA fees as advocated by the ACA. The Office noted that the statutory language in Section 708(a) does not include a reference to waivers, although another part of the Copyright Act, Section 708(c), does provide for discretionary waivers for government actors in limited circumstances. From this, the Office concluded that Congress did not intend for the Office to establish waivers for STELA-based fees. Notably, the Office does not provide hardship waivers for other fees.[8]

The Office received three initial comments and three reply comments in response to the Second NPR. The initial comments came from the ACA, Copyright Owners, and NCTA. In these comments, the licensing stakeholders

[1] 17 U.S.C. 708(a).

[2] Copyright Office Fees Notice of Proposed Rulemaking, 77 FR 18742 (Mar. 28, 2012). This Notice also included fee proposals for other fees, including for registration, recordation, and non-SOA licensing services, which will be the subject of a subsequent Final Rule.

[3] Copyright Office Fees Notice of Proposed Rulemaking, 77 FR 72788 (Dec. 6, 2012).

[4] *Id.* at 72789.

[5] *Id.*

[6] *Id.* at 72790.

[7] *Id.*

[8] *Id.* at 72790–91.

made a variety of arguments regarding the Office's methodology and the SOA fees proposed in the Second NPR.

The Copyright Owners expressed concern over the Office's proposed cable and satellite SOA fees. They stated that the new study excluded too many costs and thus did not reflect the full costs necessary to cover the Office's reasonable expenses. They also stated that the Office's new fees did not adequately balance the costs between copyright owners and licensees. The Copyright Owners further contended that the fees did not account for the continuing decline in the number of SA3 forms due to consolidation in the cable marketplace.

The ACA also filed comments, which focused on the hardship question initially set forth in the ACA's 2012 comments. ACA abandoned its original request for a hardship waiver in favor of a new request for a reduced rate for smaller entities filing SA3 forms. ACA requested that the Office provide an additional, lower-cost SA3 form for cable systems with 400,000 or fewer subscribers that would face a financial hardship if forced to pay a higher fee. The fee for this form, ACA urged, should be $50, which it argued would be more manageable for smaller entities. ACA claimed that its proposed new fee would be reasonable under STELA and would not undercut the Office's administrative costs because these forms would constitute a minority of filings.

For its part, NCTA believed that it did not have adequate information to assess whether the new fee was reasonable. It thus filed a Freedom of Information Act (''FOIA'') request seeking information about the Office's cost studies and submitted initial comments expressing concern over the reasonableness of the proposed fees.

In response to NCTA's FOIA request, the Office provided data that it believed properly could be supplied under FOIA [9] and on February 7, 2013 held a meeting, open to all interested parties, to discuss the cost study.[10] At the meeting, the Office explained its general approach and methodology in the second cost study regarding the establishment of cable and satellite SOA fees, and noted the following:

1. The Office used a three-year average of non-personnel costs in determining the baseline for new cable and satellite SOA fees. The Office used this three-year average (which spanned fiscal years 2009–2011) to avoid an aberrant result in light of the Office's recent reengineering process. If the Office had not used a three-year average for these costs, the results could have been skewed upward because of the relatively high costs incurred for reengineering efforts in 2011.

2. The Office did not use a three-year average when calculating personnel costs, but instead used payroll numbers from the pay period in effect at the time the Office commenced the second cost study. This is because a number of Licensing Division staff participated in an Office-wide voluntary separation package prior to the beginning of the study, which resulted in a decrease in staffing. The Office thus looked to the pay period immediately preceding the commencement of the second cost study because earlier time frames would have artificially inflated the personnel costs.

3. Once the Office determined the appropriate time frame(s) for assessing costs, pursuant to its mandate to set reasonable fees, it excluded certain items from the cost study. For example, the cost study excluded 75% of the cost of the Licensing Division's Fiscal Division staff because they largely support maintenance and distribution of royalty fees collected on behalf of copyright owners. Because these funds can remain undistributed for decades (through no fault of the licensees), these efforts inure largely to the benefit of copyright owners rather than SOA filers. The Office also excluded costs associated with Audio Home Recording Act filings as well as public outreach, among other exclusions for activities unrelated to cable and satellite SOAs. The Office explained that these exclusions resulted in lowering the overall amount of costs to be apportioned between copyright owners and licensees.

4. In response to stakeholders questioning the likelihood that the number of SA3 form filings would remain stable in the future, the Office explained that it had reviewed data for three years and used this to project the number of filings in the future. The statute requires the Office to recover 50% or less of costs, and thus the Office took a somewhat conservative approach so as not to underestimate potential filings, a circumstance that could result in total fee collections above the statutory limit.

5. Finally, it was noted that once the exclusions were applied, under the proposed fees, the Office projected that licensees would pay approximately 47% of the applicable costs, consistent with the statutory mandate.

After the February 7 meeting, Copyright Owners, NCTA, and DirectTV filed reply comments. Copyright Owners continued to argue that the Office should not have excluded certain costs. In addition, Copyright Owners reiterated their view that there is a downward trend in the number of operators, and objected to ACA's new proposed hardship filing fee. NCTA continued to urge that it had inadequate information on the Office's cost study and also contended that the Copyright Owners' desired increases in fees were inappropriate. NCTA also continued to dispute the Office's decision regarding the costs to be included in its calculations. DirectTV stated that the Office should not further increase satellite filing fees.

## II. Fee Setting Methodology

In conducting its cost study analysis, the Office reviewed established accounting procedures used by other governmental entities, including the Federal Accounting Standards Advisory Board's (''FASAB's'') guidelines for determining the full cost of federal agency program activities [11] and the Office of Management and Budget's *Circular No. A–25 Revised: User Charges* [12] document regarding costing guidelines and establishing user fees.

When the Office began studying potential cable and satellite SOA fees, it used the additive model to assess costs, which it also uses for peripheral fee services such as responding to FOIA requests, and some seldom-invoked services such as full-term retention of registration deposits. The additive method focuses on the desk time of dedicated employees, meaning the amount of time they spend performing activities involved in processing a typical service request. The Office initially decided to use this model because, at the time, it was thought it might be well suited to evaluate cable and satellite SOA processing costs.

As discussed above, several commenters contested the initially proposed SOA fees and, after careful review, the Office determined that the additive model did not capture all costs of performing these services, including indirect costs and time spent on upgrades to improve the processing of SOAs to the benefit of both copyright owners and filers. The Office ultimately recognized that, while effective in analyzing services that can be measured by short intervals of time, the additive method is sometimes not as successful in determining the cost of a more complex task, such as processing an entire cable or satellite SOA. The management of cable and satellite SOAs is one of the Office's major programs and constitutes the greatest percentage of staff time and related resources within the Licensing Division. Thus, the

[9] The Office withheld documents that fell within FOIA Exemption 5, which permits an agency to withhold records reflecting an agency's deliberative process. *See* Letter from George Thuronyi, Chief FOIA Officer, to Seth A. Davidson (Jan. 25, 2013).

[10] The Office invited all parties who filed comments on cable and satellite SOA fees to attend the meeting. The Office also posted a notice of the meeting on its Web site in case others were interested in attending.

[11] This includes FASAB's Managerial Cost Accounting Concepts and Standards for the Federal Government.

[12] *See http://www.whitehouse.gov/omb/circulars_a025.*

Office concluded that the study described in the First NPR did not fully reflect the cost of the program to the Licensing Division and was not an appropriate measure by which to establish SOA fees.

In light of these determinations, the Office conducted another cost study using an alternative activity-based methodology that is consistent with that employed to evaluate other types of services—including its registration and recordation functions—but with certain exclusions specific to the operation of the Licensing Division. These adjustments were reviewed at the FOIA meeting, as set forth above.

The second study yielded a more complete picture of the costs of administering the SOA program. It reflects all relevant staff time, whether directly or indirectly associated with program functions, and all relevant non-personnel costs. Because it is all-inclusive, the revised methodology accounts for costs incurred in connection with difficult or exceptional circumstances that involve time-intensive research or problem resolution. For example, it includes cases where electronic funds transfer payments need to be matched with an SOA received much earlier or later than the payment or without a remittance advice. It also covers non-routine staff effort. During the period under review, for example, the Office revised work procedures and forms and updated its internal information systems to facilitate its implementation of other aspects of STELA. The Office expects similar types of administrative and technical upgrades to continue to occur during the life of the SOA program as legal and practical requirements evolve.

STELA directs that the fees collected from licensees filing SOAs shall be reasonable and may not exceed one-half of the Office's reasonable expenses to administer the cable and satellite SOA program, including the collection and administration of SOAs and any royalty fees deposited with such statements. 17 U.S.C. 708(a). The fees established by this Final Rule are designed to recover just under one half of the Office's total cost of administering the SOA program. Of the Licensing Division's $5.27 million budget, the Office estimated in the Second NPR that the costs of administering filings under the cable and satellite SOA program would be $3.74 million, a number that the Office has since revised slightly upward, to $3.76 million, after a final review of its cost data.[13] At the fee levels hereby adopted, based upon projected filings, the expected annual fee recovery under the SOA program should be approximately $1.77 million, or 47% of the estimated $3.76 million total annual cost of the program.[14]

## III. Final Cable and Satellite SOA Fees

The Office is instituting the following SOA fees:

1. Fee for processing of a statement of account based on secondary transmissions of primary transmissions pursuant to Section 111: $15 for SA1 forms, $20 for SA2 forms, and $725 for SA3 forms
2. Fee for processing of a statement of account based on secondary transmissions of primary transmissions pursuant to Sections 119 or 122: $725

As explained above, with the enactment of STELA, the Office is authorized for the first time to impose a fee that apportions costs between SOA filers and copyright owners, who until now have shouldered all of these costs through deductions from their royalty funds. Thus, this fee study presents the Office with its first opportunity to establish SOA fees based on a review of the Office's costs for processing these SOAs.

Based on its cost study findings, the Office is creating a three-tiered fee schedule for cable operators that corresponds to the filing of the different types of cable SOAs and accounts for the increased time spent processing the more complex forms. The fee for licensees who file the SA1 form (and may pay as little as $52 each accounting period) is set at $15, at the low end of the scale, while the fee for cable systems filing the SA2 form is set slightly higher, at $20, due to somewhat higher processing costs. These fees reflect the fact that the resources required to review SA1 and SA2 forms are relatively small in comparison to those needed to process SA3 forms, as discussed below. The SA1 and SA2 form fees are reasonable in light of the lesser amount of processing required and the typical royalty payments associated with such statements.

The Office is also establishing both the cable SA3 filing fee and satellite filing fee at $725. The $725 fee is reasonable in light of the findings of the second, more complete cost study and the more substantial royalty payments associated with these SOAs. Licensees who file the considerably more complicated SA3 form should pay a correspondingly higher fee because of the time associated with reviewing the information in such filings, including the detailed classifications of community groups, television stations, and channel lineups. The $725 fee also takes into account that the SA3 forms reflect substantial royalty payments that far exceed those collected with SA1 and SA2 forms. The SA3 form fee is thus consistent with the higher amount of royalties involved and the larger amount of time that Licensing Division staff must take to accurately process the forms and royalty payments. The processing of satellite SOAs similarly involves significant royalty payments and a substantial commitment of Office resources.

Finally, the Office declines to create a lesser ''hardship'' fee for smaller cable operators that file SA3 forms. The Office has set the SOA fees to reflect its costs and has established significantly lower fees for cable systems that file the far less complex SA1 or SA2 forms. Notwithstanding the lower number of subscribers, the Office does not spend less time processing SA3 forms filed by smaller operators and thus there is no cost-based reason for a reduced fee.

In establishing fees for cable and satellite SOAs, the Office carefully reviewed public comments and held a meeting with interested parties, as described above. As might be expected, copyright owners have advocated for higher fees and filers have sought lower ones. Based on its cost study, the Office believes that it has found the appropriate middle ground. The Office concludes that the SOA fees it is now adopting are fairly apportioned, reasonable, and otherwise consistent with the guidance set forth in Section 708(a). Nonetheless, because the fees are new, the Office will continue closely to monitor its costs relating to the filing of cable and satellite SOAs, as well as the fees it collects, so it can adjust the fees as appropriate in the future.

## List of Subjects in 37 CFR Part 201

Copyright, General provisions.

## Final Rule

In consideration of the foregoing, under the authority of 17 U.S.C. 702, the U.S. Copyright Office amends 37 CFR chapter II as follows:

## PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

[13] The slight increase does not materially impact the projected recovery rate for the cable and satellite program, which is still estimated at 47%.

[14] The data and calculations comprising the Office's cost study with respect to cable and satellite fees are available on the Office's Web site at *www.copyright.gov/docs/newfees/*.

■ 2. Amend § 201.3 to add paragraphs (e)(9) and (10) to read as follows:

**§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.**

* * * * *

(e) * * *

| Licensing Division services | Fees |
|---|---|
| * * * * * * * | |
| (9) Processing of a statement account based on secondary transmissions of primary transmissions pursuant to 17 U.S.C. 111: | |
| (i) Form SA1 | 15 |
| (ii) Form SA2 | 20 |
| (iii) Form SA3 | 725 |
| (10) Processing of a statement of account based on secondary transmissions of primary transmissions pursuant to 17 U.S.C. 119 or 122 | 725 |

* * * * *

Dated: November 25, 2013.

**Maria A. Pallante,**

*Register of Copyrights.*

[FR Doc. 2013–28716 Filed 11–27–13; 8:45 am]

BILLING CODE 1410–30–P

## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 381

**[Docket No. 2013–9 CRB NCEB COLA]**

## Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 2% in the royalty rates that colleges, universities, and other educational institutions not affiliated with National Public Radio pay for the use of published nondramatic musical compositions in the SESAC repertory for the statutory license under the Copyright Act for noncommercial broadcasting.

**DATES:** *Effective Date:* December 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Keys, Program Specialist. Telephone: (202) 707–7658. Email: *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** Section 118 of the Copyright Act, title 17 of the United States Code, creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting.

On November 29, 2012, the Copyright Royalty Judges (Judges) adopted final regulations governing the rates and terms of copyright royalty payments under section 118 of the Copyright Act for the license period 2013–2017. *See* 77 FR 71104. Pursuant to these regulations, on or before December 1 of each year, the Judges shall publish in the **Federal Register** a notice of the change in the cost of living for the rate codified at § 381.5(c)(3) relating to compositions in the repertory of SESAC. *See* 37 CFR 381.10. The adjustment, fixed to the nearest dollar, shall be the greater of (1) ''the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) [CPI–U] . . . during the period from the most recent index published prior to the previous notice to the most recent index published prior to December 1, of that year,'' 37 CFR 381.10(a), or (2) 2%. 37 CFR 381.10(b), (c).

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2012, to the most recent index published before December 1, 2013, is 1%.[1] In accordance with 37 CFR 381.10(b), the Judges announce that the cost of living adjustment shall be 2%. Application of the 2% COLA to the current rate for the performance of published nondramatic musical compositions in the repertory of SESAC—$140 per station—results in an adjusted rate of $143 per station.

### List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

[1] On November 20, 2013, the Bureau of Labor Statistics announced that the CPI–U increased 1.0% over the last 12 months.

### Final Regulations

In consideration of the foregoing, the Judges amend part 381 of title 37 of the Code of Federal Regulations as follows:

## PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1), and 803.

■ 2. Section 381.5 is amended by revising paragraph (c)(3)(ii) to read as follows:

**§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

* * * * *

(c) * * *

(3) * * *

(ii) 2014: $143 per station.

* * * * *

Dated: November 21, 2013.

**Suzanne M. Barnett,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2013–28633 Filed 11–27–13; 8:45 am]

BILLING CODE 1410–72–P

## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 386

**[Docket No. 2013–8 CRB Satellite COLA]**

## Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 1% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2012 to October 2013.

**DATES:** *Effective Date:* January 1, 2014.

*Applicability Dates:* These rates are applicable to the period January 1, 2014, through December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Keys, Program Specialist. Telephone: (202) 707–7658. Email: *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** The satellite carrier compulsory license establishes a statutory copyright licensing scheme for the retransmission of distant television programming by satellite carriers. 17 U.S.C. 119. Congress created the license in 1988 and has reauthorized the license for additional five-year periods, most recently with the Satellite Television Extension and Localism Act of 2010 (STELA), Public Law 111–175.

On August 31, 2010, the Copyright Royalty Judges (Judges) adopted rates for the section 119 compulsory license for the 2010–2014 term. *See* 75 FR 53198. The rates adopted by the Judges were proposed by Copyright Owners and Satellite Carriers [1] and were unopposed. *Id.* Section 119(c)(2) of the Copyright Act requires the Judges to adjust the adopted rates annually ''to reflect any changes occurring in the cost of living adjustment as determined by the most recent Consumer Price Index (for all consumers and for all items) [CPI–U] published . . . before December 1 of the preceding year.'' Section 119 also requires that ''[n]otification of the adjusted fees shall be published in the **Federal Register** at least 25 days before January 1.'' 17 U.S.C. 119(c)(2). Today's notice fulfills this obligation.

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2012, to the most recent index published before December 1, 2013, is 1%.[2] Application of the 1% COLA to the current rate for the secondary transmission of broadcast stations by satellite carriers for private home viewing—27 cents per subscriber per month—results in the same rate of 27 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(1). Application of the 1% COLA to the current rate for viewing in commercial establishments—54 cents per subscriber per month—results in an adjusted rate of 55 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(2).

**List of Subjects in 37 CFR Part 386**

Copyright, Satellite, Television.

**Final Regulations**

In consideration of the foregoing, the Judges amend part 386 of title 37 of the Code of Federal Regulations as follows:

## PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 386 continues to read as follows:

**Authority:** 17 U.S.C. 119(c), 801(b)(1).

■ 2. Section 386.2 is amended by revising paragraphs (b)(1)(v) and (b)(2)(v) as follows:

**§ 386.2 Royalty fee for secondary transmission by satellite carriers.**

* * * * *

(b) * * *

(1) * * *

(v) 2014: 27 cents per subscriber per month.

(2) * * *

(v) 2014: 55 cents per subscriber per month.

Dated: November 21, 2013.

**Suzanne M. Barnett,**

*Chief Copyright Royalty Judge.*

[FR Doc. 2013–28632 Filed 11–27–13; 8:45 am]

BILLING CODE 1410–72–P

[1] Program Suppliers and Joint Sports Claimants comprised the Copyright Owners while DIRECTV, Inc.; DISH Network, LLC and National Programming Service, LLC, comprised the Satellite Carriers.

[2] On November 20, 2013, the Bureau of Labor Statistics announced that the CPI–U increased 1.0% over the last 12 months.

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2013–0455; FRL–9903–17–Region 4]**

## Approval and Promulgation of Implementation Plans; Tennessee; Revisions to the Knox County Portion of the Tennessee State Implementation Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) on December 13, 2012. EPA proposed action on this revision on August 16, 2013, and received no adverse comments. The SIP submittal revises the definition of ''Modification'' in Knox County Air Quality Management Regulation Section 13 *Definitions.* TDEC considers Knox County's SIP revision to be as or more stringent than the Tennessee SIP requirements. EPA is approving the Knox County SIP revision because the State has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective December 30, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0455. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

I. This Action
II. Final Action
III. Statutory and Executive Order Reviews

### I. This Action

On December 13, 2012, TDEC submitted a SIP revision to EPA for approval into the Knox County portion of the Tennessee SIP. Specifically, the

December 13, 2012, SIP revises the definition of ''Modification'' in Knox County Regulation, section 13.0—*Definitions.* The additions of subparagraphs E and F to the definition of ''Modification'' allows the local permit program authority to provide adequate, streamlined, and reasonable procedures for expeditiously processing permit changes by excluding certain modifications from construction permitting. The addition of subparagraph E provides that certain modifications (physical/method of operation) at major sources that are not considered Title I modifications do not require construction permits. The addition at subparagraph F establishes criteria for which a physical change or change in the method of operation for a minor source does not need a construction permit.

EPA proposed approval of Tennessee's December 13, 2012, submission on August 16, 2013 (78 FR 49990), and received no adverse comments on its proposed action.

## II. Final Action

EPA is approving the aforementioned change to the Knox County portion of the Tennessee SIP, because it is consistent with EPA policy and the CAA.

## III. Statutory and Executive Order Reviews

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements and Sulfur oxides.

Dated: November 12, 2013.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart RR—Tennessee

■ 2. Section 52.2220(c) is amended by revising the entry in Table 3 for ''Section 13.0'' to read as follows:

### § 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 3—EPA APPROVED KNOX COUNTY, REGULATIONS

| State section | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 13.0 | Definitions | 10/17/2012 | 11/29/2013 [Insert first page of publication]. | |

TABLE 3—EPA APPROVED KNOX COUNTY, REGULATIONS—Continued

| State section | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |

* * * * *

[FR Doc. 2013–28377 Filed 11–27–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R01–OAR–2012–0113; A–1–FRL–9903–21–Region 1]**

## Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Transportation Conformity and Conformity of General Federal Actions

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. In addition, the revision relies on the Federal rule for General Conformity. The intended effect of this action is to approve State criteria and procedures to govern conformity determinations. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule is effective January 28, 2014, unless EPA receives adverse comments by December 30, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0113 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2012–0113,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OAR–2012–0113. 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 through *www.regulations.gov*, or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1668, fax number (617) 918–0668, email *cooke.donald@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
- A. What is Transportation Conformity?
- B. What is General Conformity?
- C. Call to States for Conformity SIP Revisions
- D. Transportation Conformity Provisions of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)
- E. General Conformity Affected by SAFETEA–LU

F. Prior New Hampshire Conformity SIP Revision Action
G. State Submittal and EPA Evaluation
II. Final Action
III. Statutory and Executive Order Reviews

## I. Background and Purpose

The intent of the conformity requirements is to prevent the air quality impacts of Federal actions from causing or contributing to a violation of the national ambient air quality standards (NAAQS) or interfering with the purpose of a State Implementation Plan (SIP), Tribal Implementation Plan (TIP) or Federal Implementation Plan (FIP).

### *A. What is Transportation Conformity?*

Transportation conformity is required under Section 176(c) of the Clean Air Act to ensure that Federally supported highway, transit projects, and other activities are consistent with (''conform to'') the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Clean Air Act, for the following transportation related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and $PM_{10}$), carbon monoxide (CO), and nitrogen dioxide ($NO_2$). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards. The transportation conformity regulation is found in 40 CFR Part 93, subpart A and provisions related to conformity SIPs are found in 40 CFR 51.390.

### *B. What is General Conformity?*

General Conformity is a requirement of section 176(c) of the Clean Air Act (CAA) Amendments of 1990. General Conformity is a safeguard that no action by the Federal government interferes with a SIP's protection of the NAAQS. Under General Conformity, any action by the Federal government cannot: cause or contribute to any new violation of any standard in any area; interfere with provisions in the applicable SIP for maintenance of any standard; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard, any required interim emission reductions, or any other milestones, in any area. The general conformity regulation is found in 40 CFR Part 93, subpart B and provisions related to conformity SIPs are found in 40 CFR 51.851.

### *C. Call to States for Conformity SIP Revisions*

In the CAA, Congress recognized that actions taken by Federal agencies could affect a State, Tribal, or local agency's ability to attain and maintain the NAAQS. Congress added section 176(c) (42 U.S.C. 7506) to the CAA to ensure Federal agencies proposed actions conform to the applicable SIP, TIP or FIP for attaining and maintaining the NAAQS. That section requires Federal entities to find that the emissions from the Federal action will conform with the purposes of the SIP, TIP or FIP or not otherwise interfere with the State's or Tribe's ability to attain and maintain the NAAQS.

The CAA Amendments of 1990 clarified and strengthened the provisions in section 176(c). Because certain provisions of section 176(c) apply only to highway and mass transit funding and approvals actions, EPA published two set of regulations to implement section 176(c). The Transportation Conformity Regulations, (40 CFR Part 51, Subpart T, and 40 CFR Part 93, Subpart A) first published on November 24, 1993 (58 FR 62188), address Federal actions related to highway and mass transit funding and approval actions. The General Conformity Regulations, (40 CFR Part 51, Subpart W, and 40 CFR Part 93, Subpart B) published on November 30, 1993 (58 FR 63214), cover all other Federal actions. These two conformity regulations have been revised numerous times.

When promulgated in 1993, the Federal transportation conformity rule at 40 CFR 51.395 mandated that the transportation conformity SIP revision incorporate several provisions of the rule [1] in verbatim form, except in so far as needed to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections. Similarly, 40 CFR 51.851 required the State's general conformity provisions must contain criteria and procedures that are no less stringent than the Federal general conformity regulation, however the State could establish more stringent general conformity criteria and procedures if they apply equally to non-Federal, as well as Federal, entities.

[1] Specifically, those sections are: §§ 51.392, 51.394, 51.398, 51.400, 51.404, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432. 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51,448, 51.450, 51.460, and 51.462.

### *D. Transportation Conformity Provisions of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)*

On August 10, 2005, the SAFETEA–LU was signed into law streamlining the requirements for conformity SIPs. Prior to SAFETEA–LU being signed into law, states were required to address all of the Federal conformity rule's provisions in their conformity SIPs. Most of the sections of the Federal rule were required to be copied verbatim from the Federal rule into a state's SIP, as previously required under 40 CFR 51.390(d).

Under SAFETEA–LU, states are required to address and tailor only three sections of the conformity rule in their conformity SIPs. These three sections of the Federal rule which must meet a state's individual circumstances are: 40 CFR 93.105, which addresses consultation procedures; 40 CFR 93.122(a)(4)(ii), which requires that written commitments be obtained for control measures that are not included in a Metropolitan Planning Organization's transportation plan and transportation improvement program prior to a conformity determination, and that such commitments be fulfilled; and, 40 CFR 93.125(c) which requires that written commitments be obtained for mitigation measures prior to a project level conformity determination, and that project sponsors must comply with such commitments. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. This provision took effect on August 10, 2005, when SAFETEA–LU was signed into law.

### *E. General Conformity Affected by SAFETEA–LU*

On April 5, 2010, EPA revisited the Federal General Conformity Requirements Rule to clarify the conformity process, authorize innovative and flexible compliance approaches, remove outdated or unnecessary requirements, reduce the paperwork burden, provide transition tools for implementing new standards, address issues raised by Federal agencies affected by the rules, and provide a better explanation of conformity regulations and policies. EPA's April 2010 revised rule simplified state SIP requirements for general conformity, eliminating duplicative general conformity provisions codified at 40 CFR Part 93, Subpart B and 40 CFR Part 51, Subpart W. Finally, the April 2010 revision updated the Federal General Conformity Requirements Rule

to reflect changes to governing laws passed by Congress since EPA's 1993 rule. The SAFETEA–LU passed by Congress in 1995 contains a provision eliminating the CAA requirement for states to adopt general conformity SIPs. As a result of SAFETEA–LU, EPA's April 2010 General Conformity rule eliminated the Federal regulatory requirement for states to adopt and submit general conformity SIPs, instead making submission of a general conformity SIP a state option.

*F. Prior New Hampshire Conformity SIP Revision Action*

On August 16, 1999 (64 FR 44417), EPA approved New Hampshire's Part Env-A 1502, Conformity of General Federal Actions. New Hampshire's rule references the Federal General Conformity rule (40 CFR Part 51, Subpart W).

*G. State Submittal and EPA Evaluation*

On December 9, 2011, the State of New Hampshire submitted a SIP revision consisting of additions and amendments to Env-A 1500, Conformity. The revised rule includes requirements for establishing a consultative process relative to transportation conformity determinations. Amendments to New Hampshire State Regulation Env-A 1500 were made to (1) clarify the rules by adding certain definitions, deleting definitions that are not needed, and revising existing provisions so they are more readily understandable; (2) updating the 40 Code of Federal Regulations (CFR) part 93 references and otherwise aligning the rules with current federal requirements; (3) removing the State requirement for a minimum 30-day public comment period for conformity determinations as this is not a federal requirement and establishing alternative, more appropriate timeframes through interagency consultative process; and (4) consolidating provisions and definitions that are common to both transportation conformity and general conformity.

We have reviewed New Hampshire's submittal to assure consistency with the current Clean Air Act, as amended by SAFETEA–LU, and EPA regulations governing state procedures for transportation conformity and interagency consultation (40 CFR Part 93, Subpart A and 40 CFR 51.390) and have concluded that the submittal is approvable. Specifically, New Hampshire's rule at Env-A 1503 Transportation Conformity adequately addresses the three sections of the Federal transportation conformity rule discussed above (consultation procedures, written commitments for control measures and mitigation measures, and project sponsors compliance with such commitments). EPA notes that New Hampshire's conformity regulation at sections Env-A 1503.20 and 1503.21 require entities to obtain written commitments but does not explicitly require parties to comply with those commitments. However, as stated in 40 CFR 51.390(a), ''The federal conformity regulations contained in part 93, subpart A, of this chapter would continue to apply for the portion of the requirements that the state did not include in its conformity implementation plan and the portion, if any of the state's conformity provisions that is not approved by EPA.'' Therefore, 40 CFR 93.122(a)(4)(i) and 93.125(b) which explicitly state that entities ''must comply with the obligations of such commitments'' would continue to apply and this omission in New Hampshire's rule is not an issue.

We also reviewed New Hampshire's submittal to assure consistency with the current Clean Air Act, as amended by SAFETEA–LU, and EPA regulations governing state procedures for general conformity (40 CFR Part 93, Subpart B and 40 CFR 51.851). New Hampshire's administrative rule Env-A 1504 Conformity of General Federal Actions, adequately refers to the general conformity Federal rule for implementation.

In addition, New Hampshire's December 9, 2011 SIP revision meets the requirements set forth in section 110 of the CAA with respect to adoption and submission of SIP revisions. As a result of this action, New Hampshire's previously SIP-approved general conformity procedures for New Hampshire Env-A 1502 (August 16, 1999; 64 FR 44417) will be replaced by Env-A 1500 the procedures submitted to EPA on December 9, 2011 for approval, and adopted by State of New Hampshire on September 11, 2011 with a State effective date of October 1, 2011. The approval of New Hampshire's conformity SIP revision will strengthen the New Hampshire SIP and will assist the state in complying with Federal NAAQS. Therefore, EPA is approving New Hampshire's revision to its conformity SIP to comply with the most recent Federal Conformity Requirements.

## II. Final Action

EPA is approving New Hampshire's Env-A 1500 Conformity into the New Hampshire SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 28, 2014 without further notice unless the Agency receives relevant adverse comments by December 30, 2013.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 28, 2014 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

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

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

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

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

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: November 8, 2013.

**Michael Kenyon,**

*Acting Regional Administrator, EPA New England.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

### Subpart EE—New Hampshire

■ 2. Section 52.1520 table in paragraph (c) is amended by revising the entry for ''Env-A 1500'' to read as follows:

**§ 52.1520 Identification of plan.**

* * * * *

(c) *EPA approved regulations.*

EPA APPROVED NEW HAMPSHIRE REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date [1] | Explanations |
|---|---|---|---|---|
| * | * * | | * * | * * |
| Env–A 1500 .. | Conformity ..... | 10/1/2011 | 11/29/2013 ..... [Insert **Federal Register** page number where the document begins]. | |
| * | * * | | * * | * * |

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the FEDERAL REGISTER notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2013–28533 Filed 11–27–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[FRL–9903–40–OAR]**

## Availability of Federally-Enforceable State Implementation Plans for All States

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

**ACTION:** Notice of availability.

**SUMMARY:** Section 110(h) of the Clean Air Act, as amended in 1990 (the ''Act''), requires EPA by November 15, 1995, and every three years thereafter, to assemble the requirements of the federally-enforceable State Implementation Plans (SIPs) in each State and to publish notice in the **Federal Register** of the availability of such documents. This notice of availability fulfills the three-year requirement of making these SIP compilations for each State available to the public.

**DATES:** Effective November 29, 2013.

**ADDRESSES:** You may contact the appropriate EPA Regional Office regarding the requirements of the applicable implementation plans for each State in that region. The list below identifies the appropriate regional office for each state. The State SIP compilations are available for public inspection during normal business hours at the appropriate EPA Regional Office. If you want to view these documents, you should make an appointment with the appropriate EPA office and arrange to review the SIP at a mutually agreeable time.

*Region 1:* Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

*Regional Contact:* Donald Cooke (617/918–1668), EPA, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

See also: *http://www.epa.gov/region1/topics/air/sips.html.*

*Region 2:* New Jersey, New York, Puerto Rico, and Virgin Islands.

*Regional Contact:* Paul Truchan (212/637–3711), EPA, Air Programs Branch, 290 Broadway, New York, NY 10007–1866.

See also: *http://www.epa.gov/region02/air/sip/.*

*Region 3:* Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

*Regional Contact:* Harold A. Frankford (215/814–2108), EPA, Air Protection Division (3AP00), 1650 Arch Street, Philadelphia, PA 19103–2029.

See also: *http://yosemite.epa.gov/r3/r3sips.nsf/MidAtlanticSIPs?openform.*

*Region 4:* Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

*Regional Contact:* Nacosta Ward (404/562–9140), EPA, Air Planning Branch, 61 Forsyth Street SW., Atlanta, GA 30303–3104.

See also: *http://www.epa.gov/region4/air/sips/.*

*Region 5:* Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

*Regional Contact:* Christos Panos (312/353–8328), EPA, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604–3507.

See also: *http://www.epa.gov/region5/air/sips/index.html.*

*Region 6:* Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

*Regional Contacts:* Bill Deese (214/665–7253) and Carl Young (214/665–6645), EPA, Multimedia Planning and Permitting Division, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733.

See also: *http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm.*

*Region 7:* Iowa, Kansas, Missouri, and Nebraska.

*Regional Contact:* Jan Simpson (913/551–7089), EPA, Air and Waste Management Division, Air Planning and Development Branch, 11201 Renner Blvd., Lenexa, KS 66219.

See also: *http://www.epa.gov/region07/air/rules/fedapprv.htm.*

*Region 8:* Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

*Regional Contact:* Kathy Ayala (303/312–6142), EPA, Air Program, Office of Partnership and Regulatory Assistance, 1595 Wynkoop Street, Denver, CO 80202–1129.

See also: *http://www.epa.gov/region8/air/sip.html.*

*Region 9:* Arizona, California, Hawaii, Nevada, American Samoa, and Guam.

*Regional Contacts:* Lisa Tharp (415/947–4142) and Andy Steckel (415/947–4115), EPA, Air Division, Rules Office, (AIR–4), 75 Hawthorne Street, San Francisco, CA 94105.

See also: *http://www.epa.gov/region9/air/sips/.*

*Region 10:* Alaska, Idaho, Oregon, and Washington.

*Regional Contact:* Claudia Vaupel (206/553–6121), EPA, Office of Air Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101–3140.

See also: *http://www.epa.gov/r10earth/sips.htm.*

**FOR FURTHER INFORMATION CONTACT:** Donald Cooke, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109—3912, telephone number (617) 918–1668, fax number (617) 918–0668, email *cooke.donald@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Availability of SIP Compilations
II. What is the basis for this document?
III. What is being made available under this document?
IV. What are the documents and materials associated with the SIP?
V. Background
A. *Relationship of National Ambient Air Quality Standards (NAAQS) to SIPs*
B. *What is a State Implementation Plan?*
C. *What does it mean to be federally-enforceable?*

### I. Availability of SIP Compilations

This notice identifies the appropriate EPA Regional Offices to which you may address questions of SIP availability and SIP requirements. In response to the 110(h) requirement following the 1990 Clean Air Act Amendments, the first notice of availability was published in the **Federal Register** on November 1, 1995 at 60 FR 55459. Subsequent notices of availability were published in the **Federal Register** on November 18, 1998 (63 FR 63986), November 20, 2001 (66 FR 58070), December 22, 2004 (69 FR 76617), November 15, 2007 (72 FR 64158), and November 24, 2010 (75 FR 71548). This is the seventh notice of availability of the compilations of federally-enforceable State Implementation Plans for each state.

In addition, information on the content of EPA-approved SIPs is available on the Internet through the EPA Regional Web sites. Regional Web site addresses for Regional information are provided in the regional contacts list above.

### II. What is the basis for this document?

Section 110(h)(1) of the Clean Air Act mandates that not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990, and every three years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the **Federal Register** of the availability of such documents.

Section 110(h) recognizes the fluidity of a given State SIP. The SIP is a living document which can be revised by the State with EPA approval as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations. On May 31, 1972 (37 FR 10842), EPA approved, with certain exceptions, the initial SIPs for 50 states, four territories and the District of Columbia. [**Note:** EPA approved an additional SIP—for the Northern Mariana Islands—on November 10, 1986 (51 FR 40799)]. Since 1972, each State and territory has submitted numerous SIP revisions, either on their own initiative, or because they were required to as a result of various amendments to the Clean Air Act. This notice of availability informs the public that the SIP compilation has been updated to include the most recent requirements approved into the SIP. These approved requirements are federally-enforceable.

## III. What is being made available under this document?

This document announces that the federally-enforceable SIP for each State is available for review and public inspection at the appropriate EPA Regional Office and identifies the contact person for each regional office.

The federally-enforceable SIP is a complex document, containing both many regulatory requirements and non-regulatory items such as plans and emission inventories. Regulatory requirements include State-adopted rules and regulations, source-specific requirements reflected in consent orders, and in some cases, provisions in the enabling statutes.

Following the 1990 Clean Air Act Amendments, the first section 110(h) SIP compilation availability notice was published on November 1, 1995 (61 FR 55459). At that time, EPA announced that the SIP compilations, comprised of the regulatory portion of each State SIP, were available at the EPA Regional Office serving that particular State. In general, the compilations made available in 1995 did not include the source-specific requirements or other documents and materials associated with the SIP. With the second notice of availability in 1998, the source-specific requirements and the ''non-regulatory'' documents [e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring networks, etc.] were made available and will remain available for public inspection at the respective regional office listed in the **ADDRESSES** section above. If you want to view these documents, please make an appointment with the appropriate EPA Regional Office and arrange for a mutually agreeable time.

## IV. What are the documents and materials associated with the SIP?

In addition to state regulations that provide for air pollution control, SIPs include EPA-approved non-regulatory elements (such as transportation control measures, local ordinances, state statutes, modeling demonstrations, and emission inventories). These elements must have gone through the state rulemaking process with the opportunity for public comment. EPA also took rulemaking action on these elements and those which have been EPA-approved or conditionally approved are listed along with any limitations on their approval. Examples of EPA-approved documents and materials associated with the SIP include, but are not limited to: SIP Narratives; Particulate Matter Plans; Carbon Monoxide Plans; Ozone Plans; Maintenance plans; Vehicle Inspection and Maintenance (I/M) SIPs; Emissions Inventories; Monitoring Networks; State Statutes submitted for the purposes of demonstrating legal authority; Part D nonattainment area plans; Attainment demonstrations; Transportation control measures (TCMs); Committal measures; Contingency Measures; Non-regulatory and Non-TCM Control Measures; 15% Rate of Progress Plans; Emergency episode plans; and Visibility plans. As stated above, the ''non-regulatory'' documents are available for public inspection at the appropriate EPA Regional Office.

## V. Background

### *A. Relationship of National Ambient Air Quality Standards (NAAQS) to SIPs*

EPA has established primary and secondary National Ambient Air Quality Standards for six criteria pollutants, which are widespread common pollutants known to be harmful to human health and welfare. The criteria pollutants are: carbon monoxide; lead; nitrogen oxides; ozone; particulate matter; and sulfur dioxide. See 40 CFR part 50 for a technical description of how the levels of these standards are measured and attained. State Implementation Plans provide for implementation, maintenance, and enforcement of the NAAQS in each state. Areas within each state that are designated nonattainment are subject to additional planning and control requirements. Accordingly, different regulations or programs in the SIP will apply to different areas. EPA lists the designation of each area at 40 CFR part 81.

### *B. What is a State Implementation Plan?*

The State Implementation Plan is a plan for each State that identifies how that State will attain and/or maintain the primary and secondary NAAQS set forth in section 109 of the Clean Air Act and 40 Code of Federal Regulations 50.4 through 50.13 and 50.15 through 50.17 and which includes federally-enforceable requirements. Each State is required to have a SIP which contains control measures and strategies which demonstrate how each area will attain and maintain the NAAQS. These plans are developed through a public process, formally adopted by the State, and submitted by the Governor's designee to EPA. The Clean Air Act requires EPA to review each plan and any plan revisions and to approve the plan or plan revisions if consistent with the Clean Air Act.

SIP requirements applicable to all areas are provided in section 110. Part D of title I of the Clean Air Act specifies additional requirements applicable to nonattainment areas. Section 110 and part D describe the elements of a SIP and include, among other things, emission inventories, a monitoring network, an air quality analysis, modeling, attainment demonstrations, enforcement mechanisms, and regulations which have been adopted by the State to attain or maintain NAAQS. EPA has adopted regulatory requirements which spell out the procedures for preparing, adopting and submitting SIPs and SIP revisions. See 40 CFR part 51.

EPA's action on each State's SIP is promulgated in 40 CFR part 52. The first section in the subpart in 40 CFR part 52 for each State is generally the ''Identification of plan'' section which provides chronological development of the State SIP. Alternatively, if the state has undergone the new Incorporation by Reference formatting process (see 62 FR 27968; May 22, 1997), the identification of plan section identifies the State-submitted rules and plan elements that have been federally approved. The goal of the State-by-State SIP compilation is to identify those rules under the ''Identification of plan'' section which are currently federally-enforceable. In addition, some of the SIP compilations may include control strategies, such as transportation control measures, local ordinances, State statutes, and emission inventories. Some of the SIP compilations may not identify these other federally-enforceable elements.

The contents of a typical SIP fall into three categories: (1) State-adopted control measures which consists of either rules/regulations or source-specific requirements (e.g., orders and consent decrees); (2) State-submitted ''non-regulatory'' components (e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring networks, etc.); and (3) additional requirements promulgated by EPA (in the absence of a commensurate State provision) to satisfy a mandatory section 110 or part D (Clean Air Act) requirement.

*C. What does it mean to be federally-enforceable?*

Enforcement of the state regulation before and after it is incorporated into the federally-approved SIP is primarily a state responsibility. However, after the regulation is federally approved, EPA is authorized to take enforcement action against violators. Citizens also have legal recourse to address violations as described in section 304 of the Clean Air Act.

When States submit their most current State regulations for inclusion into federally-enforceable SIPs, EPA begins its review as soon as possible. Until EPA approves a submittal by rulemaking action, State-submitted regulations will be State-enforceable only. Therefore, State-enforceable SIPs may exist that differ from federally-enforceable SIPs. As EPA approves these State-submitted regulations, the regional offices will continue to update the SIP compilations to include these applicable requirements.

Dated: November 18, 2013.

**Gina McCarthy,**

*Administrator.*

[FR Doc. 2013–28241 Filed 11–27–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

**[EPA–R07–OAR–2013–0512; FRL 9903–15-Region 7]**

## Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, NE; and City of Omaha, NE., for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) Including Maximum Achievable Control Technology (MACT) Standards

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

**ACTION:** Notice of delegation of authority.

**SUMMARY:** The States of Iowa, Kansas, Missouri, and Nebraska and the local agencies of Lincoln-Lancaster County, Nebraska, and the city of Omaha, Nebraska, have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT standards. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

**DATES:** This document is effective on November 29, 2013. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** Copies of documents relative to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Road, Lenexa, Kansas 66219. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document must be submitted with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324.

Kansas Department of Health and the Environment, Bureau of Air, 1000 SW Jackson Street, Suite 310, Topeka, Kansas 66612–1367.

Missouri Department of Natural Resources, Air Pollution Control Program, PO Box 176, Jefferson City, Missouri 65102–0176.

Nebraska Department of Environmental Quality, Air Quality Division, 1200 ''N'' Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509.

Lincoln-Lancaster County Health Department, Division of Environmental Public Health, Air Quality Section, 3140 ''N'' Street, Lincoln, Nebraska 68510.

City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68107.

Duplicates of required documents must also continue to be submitted to the EPA Regional Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula Higbee at (913) 551–7028, or by email at *higbee.paula@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The supplementary information is organized in the following order:

I. What does this action do?
II. What is the authority for delegation?
III. What does delegation accomplish?
IV. What has been delegated?
V. What has not been delegated?
List of Delegation Tables
Table I—NSPS, 40 CFR part 60
Table II—NESHAP, 40 CFR part 61
Table III—NESHAP, 40 CFR part 63

### I. What does this action do?

EPA is providing notice of an update to its delegable authority for implementation and enforcement of the Federal standards shown in the tables below to the states of Iowa, Kansas, Missouri, and Nebraska. This action updates the delegation tables previously published at 76 FR 10761 (February 28, 2011). EPA has established procedures by which these agencies are automatically delegated the authority to implement the standards when they adopt regulations which are identical to the Federal standards. We then periodically provide notice of the new and revised standards for which delegation has been given. This notice does not affect or alter the status of the listed standards under state or Federal law.

### II. What is the Authority for Delegation?

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate

authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60.

2. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63, respectively.

**III. What does delegation accomplish?**

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective state and local air agencies. However, EPA also retains the concurrent authority to enforce the standards.

**IV. What has been delegated?**

Tables I, II, and III below list the delegated standards. Each item listed in the Subpart column has two relevant dates listed in each column for each state. The first date in each block is the reference date to the CFR contained in the state rule. In general, the state or local agency has adopted the applicable standard through the date as noted in the table. The second date is the most recent effective date of the state agency rule for which the EPA has granted the delegation. This notice specifically addresses revisions to the columns for Iowa, Kansas, Missouri, and Nebraska and the local agencies of Lincoln-Lancaster County, Nebraska, and the city of Omaha, Nebraska. If there are no dates listed in the delegation table, the state has not accepted delegation of the standard and implementation of those standards reside with EPA.

**V. What has not been delegated?**

1. The EPA regulations effective after the first date specified in each block have not been delegated, and authority for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. In such cases, a specific section of the standard details what authorities can and cannot be delegated. You should review the applicable standard in the CFR for this information.

3. In some cases, the state rules do not adopt the Federal standard in its entirety. Each state rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between the EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the state agencies, or from this office.

5. With respect to 40 CFR part 63, subpart A, General Provisions (see Table III), EPA has determined that sections 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in an EPA memorandum titled ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies'' from John Seitz, Director, Office of Air Quality Planning and Standards, dated July 10, 1998.

**List of Delegation Tables**

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7

| Sub-Part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska |
|---|---|---|---|---|---|
| A | General Provisions | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10<br>Except 60.4; 60.9; 60.10; 60.16. | 6/30/11<br>12/30/12<br>Except 60.4; 60.9; and 60.10. | 07/01/09<br>12/22/12 |
| D | Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Da | Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Db | Industrial-Commercial-Institutional Steam Generating Units. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Dc | Small Industrial-Commercial-Institutional Steam Generating Units. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| E | Incinerators | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Ea | Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989, and on or before September 20 1994. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Eb | Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994, or for Which Modification or Reconstruction is Commenced After June 19, 1996. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

| Sub-Part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska |
|---|---|---|---|---|---|
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction Commenced after June 20, 1996. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| F | Portland Cement Plants | 10/17/00<br>10/21/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| G | Nitric Acid Plants | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| H | Sulfuric Acid Plants | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| I | Hot Mix Asphalt Facilities | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| J | Petroleum Refineries | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10<br>Except provisions in Ja: 60.100a(c); in 60.101a, the definition of "flare"; 60.102a(g); and 60.107a(d) and (e). | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Ja | Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007. | | | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Kb | Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| L | Secondary Lead Smelters | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| M | Secondary Brass and Bronze Production Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| N | Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Na | Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| O | Sewage Treatment Plants | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| P | Primary Copper Smelters | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

| Sub-Part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska |
|---|---|---|---|---|---|
| Q | Primary Zinc Smelters | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| R | Primary Lead Smelters | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| S | Primary Aluminum Reduction Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Y | Coal Preparation Plants | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Z | Ferroalloy Production Facilities. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| BB | Kraft Pulp Mills | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| CC | Glass Manufacturing Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| DD | Grain Elevators | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| EE | Surface Coating of Metal Furniture. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| GG | Stationary Gas Turbines | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| HH | Lime Manufacturing Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| KK | Lead-Acid Battery Manufacturing Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| LL | Metallic Mineral Processing Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| MM | Automobile and Light Duty Truck Surface Coating Operations. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| NN | Phosphate Rock Plants | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| PP | Ammonium Sulfate Manufacture. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| SS | Industrial Surface Coating: Large Appliances. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| TT | Metal Coil Surface Coating. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

| Sub-Part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska |
|---|---|---|---|---|---|
| UU | Asphalt Processing and Asphalt Roofing Manufacture. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| Wa | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006. | | | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| WW | Beverage Can Surface Coating Industry. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| XX | Bulk Gasoline Terminals | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| AAA | New Residential Wood Heaters. | | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| BBB | Rubber Tire Manufacturing Industry. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| DDD | Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| FFF | Flexible Vinyl and Urethane Coating and Printing. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| GGG | Equipment Leaks of VOC in Petroleum Refineries. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| GGGa | Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006. | | | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| HHH | Synthetic Fiber Production Facilities. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) AIR Oxidation Unit Processes. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| JJJ | Petroleum Dry Cleaners | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| KKK | Equipment Leaks of VOC from Onshore Natural Gas Processing Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| LLL | Onshore Natural Gas Processing: $SO_2$ Emissions. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| NNN | Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| OOO | Nonmetallic Mineral Processing Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| PPP | Wool Fiberglass Insulation Manufacturing Plants. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| QQQ | VOC Emissions from Petroleum Refinery Wastewater Systems. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

| Sub-Part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska |
|---|---|---|---|---|---|
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| SSS | Magnetic Tape Coating Facilities. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| UUU | Calciners and Dryers in Mineral Industries. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| VVV | Polymeric Coating of Supporting Substrates Facilities. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| WWW | Municipal Solid Waste Landfills. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| AAAA | Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| CCCC | Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001. | 06/28/11<br>10/24/12 | 07/01/05<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| DDDD | Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999. | | 07/01/05<br>11/05/10 | | 07/01/09<br>12/22/12 |
| EEEE | Other Solid Waste Incineration Units for Which Construction Commenced After December 9, 2004 or Modification or Reconstruction Commenced On or After June 16, 2006. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| FFFF | Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004. | | 07/01/08<br>11/05/10 | | 07/01/09<br>12/22/12 |
| IIII | Stationary Compression Ignition Internal Combustion Engines. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| JJJJ | Stationary Spark Ignition Internal Combustion Engines. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| KKKK | Stationary Combustion Turbines. | 06/28/11<br>10/24/12 | 07/01/08<br>11/05/10 | 6/30/11<br>12/30/12 | 07/01/09<br>12/22/12 |
| LLLL | New Sewage Sludge Incinerator Units. | | | 6/30/11<br>12/30/12 | |

TABLE II—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7

| Sub-Part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska | Lincoln-Lancaster County | City of Omaha |
|---|---|---|---|---|---|---|---|
| A | General Provisions | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12<br>Except 61.4, 61.16 and 61.17. | 12/31/08<br>05/30/10<br>Except 61.4, 61.16 and 61.17. | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| B | Radon Emissions from Underground Uranium Mines. | | | | | | |
| C | Beryllium | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| D | Beryllium Rocket Motor Firing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| E | Mercury | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| F | Vinyl Chloride | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| L | Benzene Emissions from Coke By-Product Recovery Plants. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| M | Asbestos | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| N | Inorganic Arsenic Emissions from Glass Manufacturing Plants. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| Q | Radon Emissions From Department of Energy Facilities. | | | | | | |
| R | Radon Emissions From Phosphogypsum Stacks. | | | | | | |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings. | | | | | | |
| V | Equipment Leaks (Fugitive Emission Sources). | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| W | Radon Emissions From Operating Mill Tailings. | | | | | | |
| Y | Benzene Emissions From Benzene Storage Vessels. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| BB | Benzene Emissions From Benzene Transfer Operations. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |
| FF | Benzene Waste Operations. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/01<br>07/21/10 | 07/01/01<br>08/24/10 | 07/01/01<br>04/02/12 |

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

| Sub-part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska | Lincoln-Lancaster county | City of Omaha |
|---|---|---|---|---|---|---|---|
| A | General Provisions | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12<br>Except 63.6(f)(1), (g), (h)(1) and (h)(9); 63.7(e)(2)(ii) and (f); 63.8(f); 63.10(f); 63.12; 63.13; 63.14(b)(27) and phrase "and table 5 to subpart DDDDD of this part"; 63.14(b)(35), (39) through (53), and (55) through (62); in 63.14(i)(1), the phrase "table 5 to subpart DDDDD of this part"; and 63.15. | 6/30/11<br>12/30/12<br>Except 63.13 & 63.15(a)(2) | 07/01/11<br>12/22/12 | 07/01/09<br>08/24/10 | 07/01/11<br>04/02/12 |
| F | Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| G | Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| H | Organic Hazardous Air Pollutants for Equipment Leaks. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| I | Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| J | Polyvinyl Chloride and Copolymers Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | .....<br>..... | .....<br>..... | .....<br>..... | .....<br>..... |
| L | Coke Oven Batteries. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | .....<br>..... | .....<br>..... | .....<br>..... |
| M | National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>08/24/10 | 07/01/11<br>04/02/12 |
| N | Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

| Sub-part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska | Lincoln-Lancaster county | City of Omaha |
|---|---|---|---|---|---|---|---|
| O | Ethylene Oxide Emissions Standards for Sterilization Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| Q | Industrial Process Cooling Towers. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| R | Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations). | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| S | Pulp and Paper Industry. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| T | Halogenated Solvent Cleaning. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| U | Polymers and Resins Group I. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| W | Epoxy Resins Production and Non-Nylon Polyamides Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| X | Secondary Lead Smelting. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| Y | Marine Tank Vessel Loading Operations. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | ..... | ..... | ..... |
| AA/BB | Phosphoric Acid Manufacturing Plants/Phosphate Fertilizers Production Plants. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| CC | Petroleum Refineries. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| DD | Off-Site Waste and Recovery Operations. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| EE | Magnetic Tape Manufacturing Operations. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| GG | Aerospace Industry Surface Coating Manufacturing and Rework Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| HH | Oil and Natural Gas Production Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| II | Shipbuilding and Ship Repair (Surface Coating). | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | ..... | ..... | ..... |
| JJ | Wood Furniture Manufacturing Operations. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| KK | Printing and Publishing Industry. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| LL | Primary Aluminum Reduction Plants. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| MM | Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Along Semichemical Pulp Mills. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | .....<br>..... | 07/01/11<br>04/02/12 |
| OO | Tanks-Level 1 | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| PP | Containers | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

| Sub-part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska | Lincoln-Lancaster county | City of Omaha |
|---|---|---|---|---|---|---|---|
| QQ | Surface Impoundments. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| RR | Individual Drain Systems. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| SS | Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| TT | Equipment Leaks—Control Level 1 Standards. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| UU | Equipment Leaks—Control Level 2 Standards. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| VV | Oil-Water Separators and Organic-Water Separators. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| WW | Storage Vessel (Tanks)—Control Level 2. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| XX | Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | .....<br>..... | 07/01/11<br>04/02/12 |
| YY | Generic Maximum Achievable Control Technology Standards. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| CCC | Steel Pickling-HCL Process Facilities and Hydrochloric Acid Regeneration Plants. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| DDD | Mineral Wool Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| EEE | Hazardous Waste Combustors. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| GGG | Pharmaceutical Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| HHH | Natural Gas Transmission and Storage Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| III | Flexible Polyurethane Foam Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| JJJ | Polymers and Resins Group IV. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| LLL | Portland Cement Manufacturing Industry. | 12/20/06<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| MMM | Pesticide Active Ingredient Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| NNN | Wool Fiberglass Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| OOO | Manufacture of Amino/Phenolic Resins. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| PPP | Polyether Polyols Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| QQQ | Primary Copper Smelting. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | .....<br>..... | .....<br>..... | .....<br>..... |
| RRR | Secondary Aluminum Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

| Sub-part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska | Lincoln-Lancaster county | City of Omaha |
|---|---|---|---|---|---|---|---|
| TTT | Primary Lead Smelting. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| UUU | Petroleum Refineries. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| VVV | Publicly Owned Treatment Works. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| XXX | Ferroalloys Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| AAAA | Municipal Solid Waste Landfills. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| CCCC | Manufacturing of Nutritional Yeast. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| DDDD | Plywood and Composite Wood Products. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | ...<br>... | ...<br>... | ...<br>... |
| EEEE | Organic Liquids Distribution (Non-Gasoline). | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| FFFF | Misc. Organic Chemical Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| GGGG | Solvent Extraction for Vegetable Oil Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| HHHH | Wet Formed Fiberglass Mat Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| IIII | Surface Coating of Automobiles and Light-Duty Trucks. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| JJJJ | Paper and Other Web Coating. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| KKKK | Surface Coating of Metal Cans. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| MMMM | Surface Coating of Misc. Metal Parts and Products. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| NNNN | Surface Coating of Large Appliances. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| OOOO | Printing, Coating and Dyeing of Fabrics and Other Textiles. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| PPPP | Surface Coating of Plastic Parts and Products. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| QQQQ | Surface Coating of Wood Building Products. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| RRRR | Surface Coating of Metal Furniture. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| SSSS | Surface Coating of Metal Coil. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| TTTT | Leather Finishing Operations. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | ...<br>... | 07/01/11<br>04/02/12 |
| UUUU | Cellulose Products Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| VVVV | Boat Manufacturing | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| WWWW | Reinforced Plastic Composites Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| XXXX | Rubber Tire Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| YYYY | Stationary Combustion Turbines. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| ZZZZ | Stationary Reciprocating Internal Combustion Engines. | 4/20/06<br>10/24/12 | 7/1/09<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

| Sub-part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska | Lincoln-Lancaster county | City of Omaha |
|---|---|---|---|---|---|---|---|
| AAAAA | Lime Manufacturing Plants. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| BBBBB | Semiconductor Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | | | |
| CCCCC | Coke Ovens: Pushing, Quenching, and Battery Stacks. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | | | |
| DDDDD | Industrial, Commercial and Institutional Boilers and Process Heaters. | | | 6/30/11<br>12/30/12 | | | |
| EEEEE | Iron and Steel Foundries. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| FFFFF | Integrated Iron and Steel Manufacturing Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| GGGGG | Site Remediation | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| HHHHH | Misc. Coating Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| IIIII | Mercury Cell Chlor-Alkali Plants. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | | | |
| JJJJJ | Brick and Structural Clay Products Manufacturing. | | | | | | |
| KKKKK | Clay Ceramics Manufacturing. | 9/19/11<br>10/24/12 | | | | | |
| LLLLL | Asphalt Processing and Asphalt Roofing Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| MMMMM | Flexible Poly-urethane Foam Fabrication Operation. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| NNNNN | Hydrochloric Acid Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| PPPPP | Engine Test Cells/Stands. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| QQQQQ | Friction Materials Manufacturing Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | | | |
| RRRRR | Taconite Iron Ore Processing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | | | |
| SSSSS | Refractory Products Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| TTTTT | Primary Magnesium Refining. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | | | |
| UUUUU | Coal and Oil-fired Electric Utility Steam Generating Units. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | | | |
| WWWWW | Hospital Ethylene Oxide Sterilizer. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| YYYYY | Electric Arc Furnace Steelmaking Facilities or Stainless and Non-stainless Steel Manufacturing (EAFs). | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| ZZZZZ | Iron and Steel Foundries Area Sources. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| BBBBBB | Gasoline Distribution Bulk Terminal, Bulk Plant and Pipeline Facilities. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

| Sub-part | Source category | State of Iowa | State of Kansas | State of Missouri | State of Nebraska | Lincoln-Lancaster county | City of Omaha |
|---|---|---|---|---|---|---|---|
| CCCCCC | Gasoline Distribution, Gasoline Dispensing Facilities. | 1/24/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| DDDDDD | PVC & Copolymer Production. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| EEEEEE | Primary Copper Smelting. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| FFFFFF | Secondary Copper Smelting. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| GGGGGG | Primary Nonferrous Metal. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| HHHHHH | Paint Stripping Operations, Misc. Surface Coating, Autobody Refinishing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| JJJJJJ | Industrial, Commercial, and Institutional Boilers. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | | | |
| LLLLLL | Acrylic/Modacrylic Fibers Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |
| MMMMMM | Carbon Black Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |
| NNNNNN | Chromium Compounds. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |
| OOOOOO | Flexible Polyurethane Foam Fabrication and Production. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | |
| PPPPPP | Lead Acid Battery Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |
| QQQQQQ | Wood Preserving | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |
| RRRRRR | Clay Ceramics Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | 07/01/11<br>04/02/12 |
| SSSSSS | Pressed & Blown Glass Manufacturing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| TTTTTT | Secondary Non-Ferrous Metals. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | 07/01/11<br>04/02/12 |
| VVVVVV | Chemical Manufacturing Area Sources. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | |
| WWWWWW | Plating and Polishing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | |
| XXXXXX | Metal Fabrication and Finishing. | 9/19/11<br>10/24/12 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/01/09<br>09/28/10 | |
| YYYYYY | Ferroalloys Production. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |
| ZZZZZZ | Area Source Standards for Aluminum, Copper and Other Nonferrous Foundries. | 6/28/11<br>1/24/11 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |
| AAAAAAA | Asphalt Processing and Asphalt Roofing Manufacturing. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |
| BBBBBBB | Chemical Preparations Industry. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 12/30/09 | |
| CCCCCCC | Paints and Allied Products Manufacturing. | 6/28/11<br>1/24/11 | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 06/03/10 | |
| DDDDDDD | Prepared Foods Manufacturing. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | 07/20/10 | |
| EEEEEEE | Gold Mine Ore Processing and Production Area Source Category. | | 07/01/10<br>12/28/12 | 6/30/11<br>12/30/12 | 07/01/11<br>12/22/12 | | |

**Summary of This Action**

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This document informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

**Authority**

This document is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: November 8, 2013.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2013–28243 Filed 11–27–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2012–0429; FRL–9902–15]**

## Quinclorac; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of quinclorac in or on rapeseed, subgroup 20A. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective November 29, 2013. Objections and requests for hearings must be received on or before January 28, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0429, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0429 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 28, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0429, by one of the following methods:

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

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

### II. Summary of Petitioned-for Tolerance

In the **Federal Register** of July 25, 2012 (77 FR 43562) (FRL–9353–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8035) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.463 be amended by establishing tolerances for residues of the herbicide quinclorac (3,7-dichloro-8-quinolinecarboxylic acid), in or on rapeseed, subgroup 20A at 1.0 parts per million (ppm). That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

EPA has revised this tolerance level based on analysis of the residue field trial data using the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures. The reason for this change is explained in Unit IV.D.

### III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA

determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for quinclorac including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with quinclorac follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Quinclorac has low acute toxicity by oral, inhalation, and dermal routes of exposure. It is minimally irritating to the eye and non-irritating to the skin. Quinclorac is a skin sensitizer.

Subchronic toxicity includes, decreased body weight gains, increased water intake, increased liver enzymes, and focal chronic interstitial nephritis (rats). Chronic toxic effects include body weight decrement, increase in kidney, and liver weights, and hydropic degeneration of the kidneys (dogs). At high doses, chronic toxicity also includes increased incidences of pancreatic acinar cell hyperplasia, and adenomas (rats). Neurotoxic effects were not observed in any of the acute, subchronic and chronic studies with quinclorac.

There was no increased qualitative or quantitative fetal or offspring susceptibility in the prenatal developmental or postnatal reproduction studies. Developmental toxicity in the rabbit consisted of increased resorptions, post-implantation loss, decreased number of live fetuses, and reduced fetal body weight. These effects occurred at much higher doses than the maternal effects of decreased food consumption, and increased water consumption, and decreased body weight gain. In the rat, no developmental toxicity was observed at the highest dose tested (HDT) (438 milligrams/kilogram/day (mg/kg/day)). In the 2-generation reproduction study, parental toxicity and offspring toxicity occurred at the same dose. Parental toxicity consisted of reduced body weight in both sexes during premating and lactation periods. Offspring toxicity consisted of decreased pup weight, developmental delays and a possible marginal effect on pup viability. No reproductive toxicity occurred at the HDT (480 mg/kg/day).

There are no mutagenicity concerns. Quinclorac is not mutagenic in bacterial assays and does not cause unscheduled DNA damage in primary rat hepatocytes. There is also no evidence of a genotoxic response in whole animal test systems (*in vivo* mouse bone marrow micronucleus assay). Quinclorac was negative in a mammalian cell *in vitro* cytogenetic chromosomal aberration assay in Chinese hamster ovary cells (CHO). Quinclorac produced an equivocal increase in the incidence of one type of benign tumor (pancreatic acinar cell adenomas) in only one sex of one species of animals (male Wistar rats). There was no evidence of carcinogenicity in mice or female rats. Based on this limited evidence of cancer, a quantification of cancer risk is not warranted because the chronic reference dose (RfD) will adequately account for all chronic effects, including carcinogenicity, likely to result from exposure to quinclorac.

Neurotoxic effects were not observed in any of the acute, subchronic and chronic studies with quinclorac. Due to lack of evidence of neurotoxic effects, the Agency has determined that no acute, subchronic, or developmental neurotoxicity studies are required for quinclorac.

Specific information on the studies received and the nature of the adverse effects caused by quinclorac as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Quinclorac: Risk Assessment to Support Permanent Tolerance for Rapeseed Subgroup 20A without U.S. Registration'' in docket ID number EPA–HQ–OPP–2012–0429.

*B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a RfD—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for quinclorac used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR QUINCLORAC FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (Females 13–50 years of age) | NOAEL = 200 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 2.0 mg/kg/day.<br>aPAD = 2.0 mg/kg/day | Developmental toxicity study in rabbits.<br>LOAEL = 600 mg/kg/day based on increased early resorptions and postimplantation loss, decreased live fetuses, decreased fetal body weight. These fetal effects are presumed to occur after a single dose. |
| Acute dietary (General population including infants and children). | None | None | No acute dietary endpoint selected based on the absence of an appropriate endpoint attributed to a single dose. |
| Chronic dietary (All populations) | NOAEL = 37.5 mg/kg/day.<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.38 mg/kg/day.<br>cPAD = 0.38 mg/kg/day | Carcinogenicity study in mice.<br>LOAEL = 150 mg/kg/day based on decreased body weight. |
| Incidental oral short-term (1 to 30 days) | NOAEL = 70 mg/kg/day<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | LOC for MOE = 100. | Developmental toxicity study in rabbits.<br>LOAEL = 200 mg/kg/day based on decreased maternal body weight gain, and food consumption, and increased water consumption. |
| Dermal short-term (1 to 30 days) | None | None | No adverse effects were seen in dermal studies |
| Dermal intermediate-term (1 to 6 months) | None | None | Same |
| Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months) | Inhalation (or oral) study.<br>NOAEL = 70 mg/kg/day (inhalation absorption rate = 100%).<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Residential LOC for MOE = 100. | Developmental toxicity study in rabbits.<br>Maternity toxicity LOAEL = 200 mg/kg/day based on decreased maternal body weight gain and food consumption, and increased water consumption. |
| Inhalation (1 to 6 months) | None | None | Long-term inhalation exposure is not anticipated under current use scenarios. |
| Cancer (Oral, dermal, inhalation) | Quantification of risk using the chronic RfD will adequately account for all chronic effects, including carcinogenicity, which may result from exposure to quinclorac. | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. Mg/kg/day = milligrams/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to quinclorac, EPA considered exposure under the petitioned-for tolerances as well as all existing quinclorac tolerances in 40 CFR 180.463. EPA assessed dietary exposures from quinclorac in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for quinclorac. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, the acute dietary assessment assumes 100% crop treated (PCT) along with tolerance or maximum residue level estimates for quinclorac and its methyl ester metabolite. It used dietary exposure evaluation model (DEEM) default processing factors and an empirical processing factor for oil commodities of rapeseed subgroup 20A.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 2003–2008, NHANES/WWEIA. As to residue levels in food, the chronic dietary assessment used the same residue levels, processing factors and 100 PCT assumptions used in the acute dietary assessment.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to quinclorac. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for quinclorac. Tolerance or maximum residue levels for quinclorac and its methyl ester metabolite and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for quinclorac in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of quinclorac. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Tier I Rice Model, Version 1.0, the estimated drinking water concentrations (EDWCs) of quinclorac for surface water are estimated to be 511 parts per billion (ppb) for acute and chronic exposures. Based on the screening concentration in ground water (SCI GROW) model, the EDWCs for ground water are estimated to be 29 ppb for acute and chronic exposures. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessments, the water concentration value of 511 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Quinclorac is currently registered for the following uses that could result in residential exposures: Turf grass and ornamentals. EPA assessed residential exposure using the following assumptions: Short-term inhalation exposures for residential handlers from mixing, loading, and applying quinclorac to residential turf, and short-term postapplication incidental oral exposures (hand-to-mouth activities) of children from contact with treated turf. Intermediate-term exposures resulting from adult handler and postapplication exposures were not assessed due to a lack of a dermal POD. Incidental oral scenarios for children are considered to be short-term only. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

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

### *D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicology database for quinclorac consists of developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats. There is no indication of increased qualitative or quantitative susceptibility of rats or rabbit fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity data.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings.

i. The toxicity database for quinclorac is complete.

ii. There is no indication that quinclorac is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that quinclorac results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on tolerance or maximum residue levels for residues of concern and assumed 100 PCT. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to quinclorac in drinking water. EPA used similarly conservative assumptions to assess incidental oral exposures (hand-to-mouth activities) of toddlers to quinclorac. These assessments will not underestimate the exposure and risks posed by quinclorac.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to quinclorac and its methyl ester metabolite will occupy 1.6% of the aPAD for females age 13 to 49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to quinclorac and its methyl ester metabolite from food and water will utilize 8.9% of the cPAD for infants less than 1 year of age, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of quinclorac is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water

(considered to be a background exposure level).

Quinclorac is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to quinclorac.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 2,100 for adults and 1,600 for children 1 to 2 years old. Because EPA's LOC for quinclorac is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, quinclorac is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for quinclorac.

5. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A., the cPAD is protective of all effects, including carcinogenicity. Based on the chronic risk assessment described in Unit III.E.2., there is no concern for any potential carcinogenic effects from quinclorac.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to quinclorac residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology for quinclorac (liquid chromatography with tandem mass spectrometric detection (LC/MS/MS) method (BASF method D9708/1) and quinclorac methyl ester LC/MS/MS method (BASF method D9806/02) are available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for quinclorac.

### *C. Revisions to Petitioned-For Tolerances*

Based on the data submitted with the petition, EPA is revising the proposed tolerances in or on rapeseed subgroup 20A from 1.0 ppm to 1.5 ppm. The Agency revised this tolerance level based on analysis of the residue field trial data using the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures. Additionally, the Agency determined that the tolerance expression for proposed tolerance on rapeseed subgroup 20A should include quinclorac methyl ester.

The qualitative nature of quinclorac residues in plants was considered adequately understood for the currently registered crops, based upon the metabolism studies on rice, sorghum, and wheat. Additional metabolism data were submitted for quinclorac on canola to support use on rapeseed. This study showed a significant level of quinclorac methyl ester. The qualitative nature of quinclorac residues in livestock is also understood based upon the adequate goat and poultry metabolism studies. In earlier risk assessments, EPA had concluded that parent is the only residue of concern in both plant and livestock commodities for purposes of the tolerance expression and risk assessment. For the current action, because of the significant level of quinclorac methyl ester found, the Agency concluded that the residue of concern on canola is quinclorac and its methyl ester.

## V. Conclusion

Therefore, tolerances are established for residues of the herbicide quinclorac, including its metabolites and degradates, in or on the following commodity. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, and its methyl ester, methyl-3,7-dichloro-8-quinolinecarboxylate, calculated as the stoichiometric equivalent of quinclorac, in or on rapeseed, subgroup 20A at 1.5 ppm.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the

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

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

### VII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: November 22, 2013.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.463:

■ a. Designate the text of paragraph (a) as paragraph (a)(1).

■ b. Add new paragraph (a)(2).

The amendments read as follows:

**§ 180.463 Quinclorac; tolerances for residues.**

(a) * * *

(2) Tolerances are established for residues of the herbicide quinclorac, including its metabolites and degradates, in or on the commodity in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, and its methyl ester, methyl-3,7-dichloro-8-quinolinecarboxylate, calculated as the stoichiometric equivalent of quinclorac, in or on the commodity.

| Commodity | Parts per million |
|---|---|
| Rapeseed, subgroup 20A [1] | 1.5 |

[1] There are no U.S. Registrations.

* * * * *

[FR Doc. 2013–28640 Filed 11–27–13; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Part 102–118

**[FRM Change 2013–01; FMR Case 2013–102–3; Docket No. 2013–0014; Sequence No. 1]**

**RIN 3090–AJ39**

## Federal Management Regulation (FMR); Transportation Payment and Audit

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** GSA is amending the Federal Management Regulation (FMR) to update the name and contact information of the Civilian Board of Contract Appeals (CBCA) from the previously named General Services Board of Contract Appeals (GSBCA).

**DATES:** *Effective Date:* November 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Lee Gregory, Office of Government-wide Policy, at 202–501–1533. Please cite FMR Case 2013–102–3. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Civilian Board of Contract Appeals (CBCA) was established on January 6, 2007, pursuant to section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, 119 Stat. 3391. That portion of the statute is now incorporated into the 2011 codification of the Contract Disputes Act, 41 U.S.C. 7101–7109, and the section specifically addressing the establishment of the CBCA is incorporated into 41 U.S.C. 7105(b)(1) ''There is established in the General Services Administration the Civilian Board of Contract Appeals.'' Although the Board is functionally located within U.S. General Services Administration as of July 8, 2011, ''GSA'' is not part of its name.

This final rule amends FMR part 102–118 (41 CFR part 102–118) by removing the term ''General Services Board of Contract Appeals'' and adding the term ''Civilian Board of Contract Appeals (CBCA)'' in its place.

### B. 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, will not be subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

### C. Regulatory Flexibility Act

While these revisions are substantive, this final rule would not 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.* This final rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**E. Small Business Regulatory Enforcement Fairness Act**

This final rule is also exempt from Congressional review prescribed by 5 U.S.C. 801 since it relates to agency management and personnel.

**List of Subjects in 41 CFR Part 102–118**

Accounting, Claims, Government property management, Reporting and recordkeeping requirements, Transportation.

Dated: September 26, 2013.

**Dan Tangherlini,**

*Administrator of General Services.*

For the reasons set forth in the preamble, GSA amends 41 CFR Part 102–118 as set forth below:

## PART 102–118—TRANSPORTATION PAYMENT AND AUDIT

■ 1. The authority citation for 41 CFR part 102–118 continues to read as follows:

**Authority:** 31 U.S.C. 3726; and 40 U.S.C. 481, *et seq.*

**§ 102–118.410 [Amended]**

■ 2. Amend § 102–118.410 in paragraph (a)(4) by removing ''GSA Board'' and adding the word ''Civilian Board'' in its place.

**§ 102–118.490 [Amended]**

■ 3. Amend § 102–118.490 in paragraph (b) by removing ''General Services'' and adding ''Civilian'' in its place.

■ 4. Revise § 102–118.580 to read as follows:

**§ 102–118.580 May a TSP appeal a prepayment audit decision of the GSA Audit Division?**

Yes, the TSP may appeal to the Civilian Board of Contract Appeals (CBCA) under guidelines established in this Subpart F, or file a claim with the United States Court of Federal Claims. The TSP's request for review must be received by the CBCA in writing within 6 months (not including times of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. The TSP must address requests:

(a) By United States Postal Service to: Civilian Board of Contract Appeals (CBCA), 1800 F Street NW., Washington, DC 20405;

(b) In person or by courier to: Civilian Board of Contract Appeals, 6th floor, 1800 M Street NW., Washington, DC 20036;

(c) By facsimile (FAX) to: 202–606–0019; or

(d) By electronic mail to: *cbca.efile@cbca.gov.*

■ 5. Revise § 102–118.655 to read as follows:

**§ 102–118.655 Are there time limits on a TSP request for an administrative review by the Civilian Board of Contract Appeals (CBCA)?**

Yes, the CBCA must receive a request for review from the TSP within six months (not including times of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. Address requests:

(a) By United States Postal Service to: Civilian Board of Contract Appeals (CBCA), 1800 F Street NW., Washington, DC 20405;

(b) In person or by courier to: Civilian Board of Contract Appeals, 6th floor, 1800 M Street NW., Washington, DC 20036;

(c) By facsimile (FAX) to: 202–606–0019; or

(d) By electronic mail to: *cbca.efile@cbca.gov.*

[FR Doc. 2013–28578 Filed 11–27–13; 8:45 am]

BILLING CODE 6820–14–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### 49 CFR Parts 1121, 1150, and 1180

**[Docket No. EP 714]**

### Information Required in Notices and Petitions Containing Interchange Commitments

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of OMB Approval of Information Collection.

**SUMMARY:** Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501—3519 (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.11, the Surface Transportation Board has obtained OMB approval for the collection of information adopted by the Board in *Information Required in Notices and Petitions Containing Interchange Commitments,* STB Ex Parte No. 714 (STB served Sept. 5, 2013). *See also* 78 FR 54589 (Sept. 5, 2013).

This collection, which is codified at 49 CFR Parts 1121, 1150, and 1180, has been assigned OMB Control No. 2140–0016. Unless renewed, OMB approval expires on November 30, 2016. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.8, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

**DATES:** Effective November 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Levitt, Office of General Counsel, (202) 245–0269.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–28614 Filed 11–27–13; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 130312235–3658–02]**

**RIN 0648–XC982**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for South Atlantic Red Porgy

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for the commercial sector for red porgy in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for red porgy, as estimated by the Science Research Director (SRD), are projected to reach the commercial annual catch limit (ACL) on December 2, 2013. Therefore, NMFS closes the commercial sector for red porgy in the South Atlantic EEZ on December 2, 2013, and

it will remain closed through December 31, 2013. This closure is necessary to protect the red porgy resource.

**DATES:** This rule is effective 12:01 a.m., local time, December 2, 2013, until 12:01 a.m., local time, January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes red porgy and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for red porgy in the South Atlantic is 147,115 lb (66,730 kg), gutted weight, for the current 2013 fishing year, as specified in 50 CFR 622.190(a)(6)(i).

In accordance with regulations at 50 CFR 622.193(v)(1)(i), NMFS is required to close the commercial sector for red porgy when its commercial ACL (commercial quota) has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL (commercial quota) for South Atlantic red porgy for the 2013 fishing year will have been reached by December 2, 2013. Commercial harvest or possession of red porgy is prohibited during January—April each year. Accordingly, the commercial sector for South Atlantic red porgy is closed effective 12:01 a.m., local time, December 2, 2013, until 12:01 a.m., local time, May 1, 2014.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having red porgy onboard must have landed and bartered, traded, or sold such red porgy prior to 12:01 a.m., local time, December 2, 2013. During the closure, the bag limit specified in 50 CFR 622.187(b)(6) and the possession limits specified in 50 CFR 622.187(c)(2) apply to all harvest or possession of red porgy in or from the South Atlantic EEZ. During the closure, the sale or purchase of red porgy taken from the EEZ is prohibited. As specified in 50 CFR 622.190(c)(1)(i), the prohibition on sale or purchase does not apply to the sale or purchase of red porgy that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 2, 2013, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for red porgy apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

As specified in 50 CFR 622.184(c), during January, February, March, and April, the harvest or possession of red porgy in or from the South Atlantic EEZ is limited to three per person per day or three per person per trip, whichever is more restrictive. In addition, this limitation is applicable in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.192(f).

## Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic red porgy and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

The temporary rule has been determined to be not significant for purposes of Executive Order 12866.

This action is taken under 50 CFR 622.193(v)(1)(i) and is exempt from review under Executive Order 12866.

This action responds to the best available scientific information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for red porgy constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect red porgy since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL (commercial quota). Prior notice and opportunity for public comment would require time and would likely result in a harvest well in excess of the established commercial ACL (commercial quota).

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 25, 2013.

**Sean F. Corson,**

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

[FR Doc. 2013–28647 Filed 11–25–13; 4:15 pm]

BILLING CODE 3510–22–P

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 130312235–3658–02]**

**RIN 0648–XC984**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2013 Commercial Accountability Measure and Closure for South Atlantic Vermilion Snapper

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for the commercial sector for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for vermilion snapper, as estimated by the Science Research Director (SRD), are projected to reach the commercial annual catch limit (ACL) for the July 1 through December 31, 2013, fishing period on December 2, 2013. Therefore, NMFS closes the commercial sector for vermilion snapper in the South Atlantic EEZ on December 2, 2013, and it will remain closed until the start of the January 1 through June 30, 2014, fishing period. This closure is necessary to protect the vermilion snapper resource.

**DATES:** This rule is effective 12:01 a.m., local time, December 2, 2013, until 12:01 a.m., local time, January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South

Atlantic includes vermilion snapper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for vermilion snapper in the South Atlantic is divided into two, 6-month time periods, and is 420,252 lb (190,623 kg), gutted weight, for the current fishing period, July 1 through December 31, 2013, as specified in 50 CFR 622.190(a)(4)(ii)(A).

In accordance with regulations at 50 CFR 622.193(f)(1), NMFS is required to close the commercial sector for vermilion snapper when its commercial ACL (commercial quota) for that portion of the fishing year applicable to the respective commercial ACL (commercial quota) has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL (commercial quota) for South Atlantic vermilion snapper for the July–December fishing period will have been reached by December 2, 2013. Accordingly, the commercial sector for South Atlantic vermilion snapper is closed effective 12:01 a.m., local time, December 2, 2013, until 12:01 a.m., local time, January 1, 2014. The commercial ACL (commercial quota) for vermilion snapper in the South Atlantic is 401,874 lb (182,287 kg), gutted weight, for the January 1 through June 30, 2014, fishing period, as specified in 50 CFR 622.190(a)(4)(i)(B).

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, December 2, 2013. During the closure, the bag limit specified in 50 CFR 622.187(b)(5), applies to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, including the bag limit that may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. During the closure, the possession limits specified in 50 CFR 622.187(c)(1) apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ. During the closure, the sale or purchase of vermilion snapper taken from the EEZ is prohibited. As specified in 50 CFR 622.190(c)(1)(i), the prohibition on sale or purchase does not apply to the sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 2, 2013, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

## Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

The temporary rule has been determined to be not significant for purposes of Executive Order 12866.

This action is taken under 50 CFR 622.193(f)(1) and is exempt from review under Executive Order 12866.

This action responds to the best available scientific information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for vermilion snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect vermilion snapper since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would likely result in a harvest well in excess of the established commercial ACL (commercial quota).

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 25, 2013.

**Sean F. Corson,**

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

[FR Doc. 2013–28648 Filed 11–27–13; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register

Vol. 78, No. 230

Friday, November 29, 2013

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 40, 70, 72, 74, and 150

**[NRC–2009–0096 and NRC–2013–0195]**

**RIN 3150–AI61**

### Amendments to Material Control and Accounting Regulations and Proposed Guidance for Fuel Cycle Facility Material Control and Accounting Plans and Completing the U.S. Nuclear Regulatory Commission Form 327

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of public meeting on proposed rule and proposed guidance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) plans to hold a public meeting on its proposed rule to amend its regulations for material control and accounting (MC&A) of special nuclear material (SNM) and the proposed guidance documents that discuss acceptable methods that licensees may use to prepare and implement their MC&A plans and how the NRC will review and inspect these plans.

**DATES:** The public meeting will be held on December 10, 2013, from 1:00 p.m. to 5:00 p.m. (Eastern Standard Time (EST)).

**ADDRESSES:** The public meeting will be held at the NRC's headquarters, Room T2–B1, 11545 Rockville Pike, Rockville, Maryland 20852. Members of the public may also participate in the meeting via teleconference or Webinar. Information for the teleconference and Webinar is available in the meeting notice, which can be accessed through the NRC's public Web site at *http://meetings.nrc.gov/pmns/mtg*.

Please refer to Docket ID NRC–2009–0096 when contacting the NRC about the availability of information for the proposed rule, and refer to Docket ID NRC–2013–0195 when contacting the NRC about the availability of information for the draft NUREGs. You may access publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0096 for information about the proposed rule and Docket ID NRC–2013–0195 for information about the draft NUREGs. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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*.
- *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:** Thomas Young, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5795; email: *Thomas.Young@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On November 8, 2013 (78 FR 67225; NRC–2009–0096), the NRC published for public comment a proposed rule to amend its regulations for MC&A of SNM. Also on November 8, 2013 (78 FR 67224; NRC–2013–0195), the NRC published for public comment the proposed guidance documents that discuss acceptable methods that licensees may use to prepare and implement their MC&A plans and how the NRC will review and inspect these plans. The public comment period for the proposed rule and the proposed guidance closes on February 18, 2014.

The goal of this rulemaking is to revise and consolidate the MC&A requirements in order to update, clarify, and strengthen them. The proposed amendments add new requirements that would apply to NRC licensees who are authorized to possess SNM in a quantity greater than 350 grams.

## II. Public Meeting

To facilitate the understanding of the public and other stakeholders of these issues and the submission of comments, the NRC staff plans to hold a public meeting on December 10, 2013, from 1:00 p.m. to 5:00 p.m. (EST), in Rockville, Maryland. The meeting notice can be accessed through the NRC's public Web site at *http://meetings.nrc.gov/pmns/mtg*. The final agenda and the meeting materials will be posted no fewer than 10 days prior to the meeting at this Web site.

In addition, members of the public may also participate in the meeting via teleconference or Webinar. Information for the teleconference and Webinar is available in the meeting notice, which can be accessed through the NRC's public Web site at *http://meetings.nrc.gov/pmns/mtg*. Participants must register at the Internet link in the meeting notice to participate in the Webinar. To register in advance for the teleconference, please contact Thomas Young at 301–415–5795 (email: *Thomas.Young@nrc.gov*).

Dated at Rockville, Maryland, this 22nd day of November, 2013.

For the Nuclear Regulatory Commission.

**Dehborah Jackson,**

*Deputy Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. 2013–28698 Filed 11–27–13; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede airworthiness directive (AD) 2007–03–02 for all Rolls-Royce Deutschland (RRD) Tay 620–15, Tay 650–15, and Tay 651–54 turbofan engines. AD 2007–03–02 requires an ultrasonic inspection (UI) of low-pressure (LP) compressor fan blades for cracks on certain serial number (S/N) Tay 650–15 engines. AD 2007–03–02 also requires, for all Tay 611–8, 620–15, Tay 650–15, and Tay 651–54 engines, initial and repetitive UIs of LP compressor fan blades. AD 2007–03–02 also requires, for Tay 650–15 and Tay 651–54 engines, UIs of LP compressor fan blades whenever the blade set is removed from one engine and installed on a different engine. Since we issued AD 2007–03–02, we received a report of an additional engine failure due to multiple fan blade separation. This proposed AD would require additional inspections for the affected engines and removal of the Tay 611–8 engine from the applicability of this AD. We are proposing this AD to prevent failure of the LP compressor fan blade, engine failure, and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by January 28, 2014.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33 7086 1200; fax: 49 0 33 7086 1212. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

## Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781 238 7779; fax: 781 238 7199; email: *frederick.zink@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

## Discussion

On January 22, 2007, we issued AD 2007–03–02, Amendment 39–14913 (72 FR 3936, January 29, 2007) (''AD 2007–03–02'') for certain RRD Tay 611–8 and Tay 620–15 turbofan engines with LP compressor module, part number (P/N) M01100AA or P/N M01100AB, installed, and Tay 650–15 and Tay 651–54 turbofan engines with LP compressor module, P/N M01300AA or P/N M01300AB, installed. AD 2007–03–02 requires UI of LP compressor fan blades for cracks on certain S/N Tay 650–15 engines. AD 2007–03–02 also requires, for all Tay 611–8, 620–15, 620–15/20, Tay 650–15, Tay 650–15/20, and Tay 651–54 engines, initial and repetitive UIs of LP compressor fan blades. AD 2007–03–02 also requires, for Tay 650–15 and Tay 651–54 engines, UIs of LP compressor fan blades whenever the blade set is removed from one engine and installed on a different engine. AD 2007–03–02 resulted from a report that a set of LP compressor fan blades failed before reaching the LP compressor fan blade full published life limit. We issued AD 2007–03–02 to prevent LP compressor fan blades from failing due to blade root cracks, leading to uncontained engine failure and damage to the airplane.

## Actions Since AD 2007–03–02 Was Issued

Since we issued AD 2007–03–02, we received reports of additional engine failures. Also since we issued AD 2007–03–02, the European Aviation Safety Agency issued AD 2013–151R2, dated September 2, 2013, which requires UI, and replacement if found cracked, of affected LP compressor fan blades. Also since we issued AD 2007–03–02, RRD issued ANMSB TAY–72–A1442, Revision 5, dated May 31, 2013 which removed the Tay 611–8 engine from the list of applicable engines.

## FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

## Proposed AD Requirements

This proposed AD requires a UI of LP compressor fan blades for cracks for all 620–15, Tay 650–15, and Tay 651–54 engines. This proposed AD would also require accomplishing the actions specified in the service information described previously.

## Costs of Compliance

We estimate that this proposed AD would affect about 52 engines installed on airplanes of U.S. registry. We also estimate that it would take about 4 hours per engine to remove and inspect an LP compressor blade set. The average labor rate is $85 per hour. Prorated parts life will cost about $11,750 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $628,680.

## Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–03–02, Amendment 39–14913 (72 FR 3936, January 29, 2007), and adding the following new AD:

**Rolls-Royce Deutschland Ltd & Co KG:** Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by January 28, 2014.

**(b) Affected ADs**

This AD supersedes AD 2007–03–02, Amendment 39–14913 (72 FR 3936, January 29, 2007).

**(c) Applicability**

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 620–15 turbofan engines with low-pressure (LP) compressor module, part number (P/N) M01100AA or P/N M01100AB, installed, and Tay 650–15 and Tay 651–54 turbofan engines with LP compressor module, P/N M01300AA or P/N M01300AB, installed.

**(d) Unsafe Condition**

This AD was prompted by a report of an additional engine failure. We are issuing this AD to prevent failure of the LP compressor fan blade, engine failure, and damage to the airplane.

**(e) Compliance**

Comply with this AD within the compliance times specified, unless already done.

(1) Tay 650–15 and Tay 651–54 engine LP Compressor Fan Blade Ultrasonic Inspection (UI):

(i) After the effective date of this AD, whenever LP compressor fan blades are removed from an engine, before re-installation on a different engine, inspect the LP compressor fan blades and accomplish a UI of the LP compressor fan blades in accordance with Instruction I of paragraph 3 of RRD Alert Non-Modification Service Bulletin (NMSB) TAY–72–A1442, Revision 6, dated August 26, 2013.

(ii) After the effective date of this AD, during each engine shop visit, before return to service of the engine, inspect the LP compressor fan blades and accomplish a UI of the LP compressor fan blades in accordance with Instruction II of paragraph 3 of RRD Alert NMSB TAY–72–A1442, Revision 6, dated August 26, 2013.

(2) For Tay 620–15 engine LP Compressor Fan Blade UI, after the effective date of this AD, before return to service of an engine after every mid-life, or every calendar life, or every overhaul shop visit, inspect the LP compressor fan blades and accomplish a UI of the LP compressor fan blades in accordance with Instruction II of paragraph 3 of RRD Alert NMSB TAY–72–A1442, Revision 6, dated August 26, 2013.

(3) For Tay 620–15, Tay 650–15, and Tay 651–54 engine LP Compressor Fan Blade and Rotor Disk Replacement, if during any inspection required by paragraph (e)(1) or (e)(2) of this AD, any LP compressor fan blade is found cracked, before next flight or return to service of the engine, replace the complete set of the LP compressor fan blades and the LP compressor rotor disk.

**(f) Credit for Previous Actions**

If, before the effective date of this AD, you inspected or replaced any Tay 620–15, Tay 650–15, or Tay 651–54 turbofan engine LP compressor fan blades or rotor disk assembly using RRD Alert NMSB TAY–72–A1442, Revision 5, or earlier, you have satisfied the requirements of paragraphs (e)(1) through (e)(3) of this AD.

**(g) Definitions**

For the purposes of this AD for Tay 620–15 engines:

(1) A mid-life shop visit is an engine shop visit accomplished before accumulating 12,000 engine flight cycles since new (FCSN) or flight cycles (FC) since last engine mid-life shop visit;

(2) A calendar-life shop visit is an engine shop visit accomplished within 10 years since new or since the last engine calendar-life shop visit;

(3) An overhaul shop visit is an engine shop visit accomplished before accumulating 22,000 engine FCSN or FC since the last engine overhaul shop visit.

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

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(i) Related Information**

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238 7779; fax: 781–238 7199; email: *frederick.zink@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency, AD 2013–151R2, dated September 2, 2013, for more information. You may examine the AD on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2006-24777-0012.*

(3) Rolls-Royce Deutschland Ltd & Co KG Alert Non-Modification Service Bulletin No. TAY–72–A1442, Revision 6, dated August 26, 2013, pertains to the subject of this AD and can be obtained from RRD, using the contact information in paragraph (i)(4) of this AD.

(4) Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33 7086 1200; fax: 49 0 33 7086 1212.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on November 19, 2013.

**Colleen M. D'Alessandro,**

*Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2013–28604 Filed 11–27–13; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–134417–13]**

**RIN 1545–BL81**

## Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide guidance to tax-exempt social welfare organizations on political activities related to candidates that will not be considered to promote social welfare. These regulations will affect tax-exempt social welfare organizations and organizations seeking such status. This document requests comments from the public regarding these proposed regulations. This document also requests comments from the public regarding the standard under current regulations that considers a tax-exempt social welfare organization to be operated exclusively for the promotion of social welfare if it is ''primarily'' engaged in activities that promote the common good and general welfare of the people of the community, including how this standard should be measured and whether this standard should be changed.

**DATES:** Written or electronic comments and requests for a public hearing must be received by February 27, 2014.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–134417–13), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–134417–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–134417–13).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Amy F. Giuliano at (202) 317–5800; concerning submission of comments and requests for a public hearing, Oluwafunmilayo Taylor at (202) 317–6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 28, 2014.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology.

The collection of information in these proposed regulations is in § 1.501(c)(4)–1(a)(2)(iii)(D), which provides a special rule for contributions by an organization described in section 501(c)(4) of the Internal Revenue Code (Code) to an organization described in section 501(c). Generally, a contribution by a section 501(c)(4) organization to a section 501(c) organization that engages in candidate-related political activity will be considered candidate-related political activity by the section 501(c)(4) organization. The special rule in § 1.501(c)(4)–1(a)(2)(iii)(D) provides that a contribution to a section 501(c) organization will not be treated as a contribution to an organization engaged in candidate-related political activity if the contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in any such activity and the contribution is subject to a written restriction that it not be used for candidate-related political activity. This special provision would not apply if the contributor organization knows or has reason to know that the representation is inaccurate or unreliable. The expected recordkeepers are section 501(c)(4) organizations that choose to contribute to, and to seek a written representation from, a section 501(c) organization.

*Estimated number of recordkeepers:* 2,000.

*Estimated average annual burden hours per recordkeeper:* 2 hours.

*Estimated total annual recordkeeping burden:* 4,000 hours.

A particular section 501(c)(4) organization may require more or less time, depending on the number of contributions for which a representation is sought.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

### Background

Section 501(c)(4) of the Code provides a Federal income tax exemption, in part, for ''[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.'' This exemption dates back to the enactment of the federal income tax in 1913. See Tariff Act of 1913, 38 Stat. 114 (1913). The statutory provision was largely unchanged until 1996, when section 501(c)(4) was amended to prohibit inurement of an organization's net earnings to private shareholders or individuals.

Prior to 1924, the accompanying Treasury regulations did not elaborate on the meaning of ''promotion of social welfare.'' See Regulations 33 (Rev.), art. 67 (1918). Treasury regulations promulgated in 1924 explained that civic leagues qualifying for exemption under section 231(8) of the Revenue Act of 1924, the predecessor to section 501(c)(4) of the 1986 Code, are ''those not organized for profit but operated exclusively for purposes beneficial to the community as a whole,'' and generally include ''organizations engaged in promoting the welfare of mankind, other than organizations comprehended within [section 231(6) of the Revenue Act of 1924, the predecessor to section 501(c)(3) of the 1986 Code].'' See Regulations 65, art. 519 (1924). The regulations remained substantially the same until 1959.

The current regulations under section 501(c)(4) were proposed and finalized in 1959. They provide that ''[a]n organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.'' Treas. Reg. § 1.501(c)(4)–1(a)(2)(i). An organization ''embraced'' within section 501(c)(4) is one that is ''operated primarily for the purpose of bringing about civic betterments and social improvements.'' *Id.* The regulations further provide that ''[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.'' Treas. Reg. § 1.501(c)(4)–1(a)(2)(ii). This language is similar to language that appears in section 501(c)(3) requiring section 501(c)(3) organizations not to ''participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office'' (''political campaign intervention''). However, unlike the absolute prohibition that applies to charitable organizations described in section 501(c)(3), an organization that primarily engages in activities that promote social welfare will be considered under the current regulations to be operating exclusively for the promotion of social welfare, and may qualify for tax-exempt status under section 501(c)(4), even though it engages in some political campaign intervention.

The section 501(c)(4) regulations have not been amended since 1959, although Congress took steps in the intervening years to address further the relationship of political campaign activities to tax-exempt status. In particular, section 527, which governs the tax treatment of political organizations, was enacted in 1975 and provides generally that amounts received as contributions and other funds raised for political purposes (section 527 exempt function income) are not subject to tax. Section 527(e)(1) defines a ''political organization'' as ''a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.'' Section 527(f) also imposes a tax on exempt organizations described in section 501(c), including section 501(c)(4) social welfare organizations, that make an expenditure furthering a section 527 exempt function. The tax is imposed on the lesser of the organization's net investment income or section 527 exempt function expenditures. Section 527(e)(2) defines ''exempt function'' as ''the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors'' (referred to in this document as ''section 527 exempt function'').[1]

Unlike the section 501(c)(3) standard of political campaign intervention, and the similar standard currently applied under section 501(c)(4), both of which focus solely on candidates for elective public office, a section 527 exempt function encompasses activities related to a broader range of officials, including those who are appointed or nominated, such as executive branch officials and certain judges. Thus, while there is currently significant overlap in the activities that constitute political campaign intervention under sections 501(c)(3) and 501(c)(4) and those that further a section 527 exempt function, the concepts are not synonymous.

Over the years, the IRS has stated that whether an organization is engaged in political campaign intervention depends upon all of the facts and circumstances of each case. See Rev. Rul. 78–248 (1978–1 CB 154) (illustrating application of the facts and circumstances analysis to voter education activities conducted by section 501(c)(3) organizations); Rev. Rul. 80–282 (1980–2 CB 178) (amplifying Rev. Rul. 78–248 regarding the timing and distribution of voter education materials); Rev. Rul. 86–95 (1986–2 CB 73) (holding a public forum for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, does not constitute political campaign intervention under section 501(c)(3)). More recently, the IRS released Rev. Rul. 2007–41 (2007–1 CB 1421), providing 21 examples illustrating facts and circumstances to be considered in determining whether a section 501(c)(3) organization's activities (including voter education, voter registration, and get-out-the-vote drives; individual activity by organization leaders; candidate appearances; business activities; and Web sites) result in political campaign intervention. The IRS generally applies the same facts and circumstances analysis under section 501(c)(4). See Rev. Rul. 81–95 (1981–1 CB 332) (citing revenue rulings under section 501(c)(3) for examples of what constitutes participation or intervention in political campaigns for purposes of section 501(c)(4)).

Similarly, Rev. Rul. 2004–6 (2004–1 CB 328) provides six examples illustrating facts and circumstances to be considered in determining whether a section 501(c) organization (such as a section 501(c)(4) social welfare organization) that engages in public policy advocacy has expended funds for a section 527 exempt function. The analysis reflected in these revenue rulings for determining whether an organization has engaged in political campaign intervention, or has expended funds for a section 527 exempt function, is fact-intensive.

Recently, increased attention has been focused on potential political campaign intervention by section 501(c)(4) organizations. A recent IRS report relating to IRS review of applications for tax-exempt status states that ''[o]ne of the significant challenges with the 501(c)(4) [application] review process has been the lack of a clear and concise definition of 'political campaign intervention.' '' Internal Revenue Service, ''Charting a Path Forward at the IRS: Initial Assessment and Plan of Action'' at 20 (June 24, 2013). In addition, ''[t]he distinction between campaign intervention and social welfare activity, and the measurement of the organization's social welfare activities relative to its total activities, have created considerable confusion for both the public and the IRS in making appropriate section 501(c)(4) determinations.'' *Id.* at 28. The Treasury Department and the IRS recognize that both the public and the IRS would benefit from clearer definitions of these concepts.

**Explanation of Provisions**

*1. Overview*

The Treasury Department and the IRS recognize that more definitive rules with respect to political activities related to candidates—rather than the existing, fact-intensive analysis—would be helpful in applying the rules regarding qualification for tax-exempt status under section 501(c)(4). Although more definitive rules might fail to capture (or might sweep in) activities that would (or would not) be captured under the IRS' traditional facts and circumstances approach, adopting rules with sharper distinctions in this area

[1] In 2000 and 2002, section 527 was amended to require political organizations (with some exceptions) to file a notice with the IRS when first organized and to periodically disclose publicly certain information regarding their expenditures and contributions. See sections 527(i) and 527(j).

would provide greater certainty and reduce the need for detailed factual analysis in determining whether an organization is described in section 501(c)(4). Accordingly, the Treasury Department and the IRS propose to amend Treas. Reg. § 1.501(c)(4)–1(a)(2) to identify specific political activities that would be considered candidate-related political activities that do not promote social welfare.

To distinguish the proposed rules under section 501(c)(4) from the section 501(c)(3) standard and the similar standard currently applied under section 501(c)(4), the proposed regulations would amend Treas. Reg. § 1.501(c)(4)–1(a)(2)(ii) to delete the current reference to ''direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office,'' which is similar to language in the section 501(c)(3) statute and regulations. Instead the proposed regulations would revise Treas. Reg. § 1.501(c)(4)–1(a)(2)(ii) to state that ''[t]he promotion of social welfare does not include direct or indirect candidate-related political activity.'' As explained in more detail in section 2 of this preamble, the proposed rules draw upon existing definitions of political campaign activity, both in the Code and in federal election law, to define candidate-related political activity that would not be considered to promote social welfare. The proposed rules draw in particular from certain statutory provisions of section 527, which specifically deals with political organizations and taxes section 501(c) organizations, including section 501(c)(4) organizations, on certain types of political campaign activities. Recognizing that it may be beneficial to have a more uniform set of rules relating to political campaign activity for tax-exempt organizations, the Treasury Department and the IRS request comments in subparagraphs a through c of this section of the preamble regarding whether the same or a similar approach should be adopted in addressing political campaign activities of other section 501(c) organizations, as well as whether the regulations under section 527 should be revised to adopt the same or a similar approach in defining section 527 exempt function activity.

a. Interaction With Section 501(c)(3)

These proposed regulations do not address the definition of political campaign intervention under section 501(c)(3). The Treasury Department and the IRS recognize that, because such intervention is absolutely prohibited under section 501(c)(3), a more nuanced consideration of the totality of facts and circumstances may be appropriate in that context. The Treasury Department and the IRS request comments on the advisability of adopting an approach to defining political campaign intervention under section 501(c)(3) similar to the approach set forth in these regulations, either in lieu of the facts and circumstances approach reflected in Rev. Rul. 2007–41 or in addition to that approach (for example, by creating a clearly defined presumption or safe harbor). The Treasury Department and the IRS also request comments on whether any modifications or exceptions would be needed in the section 501(c)(3) context and, if so, how to ensure that any such modifications or exceptions are clearly defined and administrable. Any such change would be introduced in the form of proposed regulations to allow an additional opportunity for public comment.

b. Interaction With Section 527

As noted in the ''Background'' section of this preamble, a section 501(c)(4) organization is subject to tax under section 527(f) if it makes expenditures for a section 527 exempt function. Consistent with section 527, the proposed regulations provide that ''candidate-related political activity'' for purposes of section 501(c)(4) includes activities relating to selection, nomination, election, or appointment of individuals to serve as public officials, officers in a political organization, or Presidential or Vice Presidential electors. These proposed regulations do not, however, address the definition of ''exempt function'' activity under section 527 or the application of section 527(f). The Treasury Department and the IRS request comments on the advisability of adopting rules that are the same as or similar to these proposed regulations for purposes of defining section 527 exempt function activity in lieu of the facts and circumstances approach reflected in Rev. Rul. 2004–6. Any such change would be introduced in the form of proposed regulations to allow an additional opportunity for public comment.

c. Interaction With Sections 501(c)(5) and 501(c)(6)

The proposed regulations define candidate-related political activity for social welfare organizations described in section 501(c)(4). The Treasury Department and the IRS are considering whether to amend the current regulations under sections 501(c)(5) and 501(c)(6) to provide that exempt purposes under those regulations (which include ''the betterment of the conditions of those engaged in [labor, agricultural, or horticultural] pursuits'' in the case of a section 501(c)(5) organization and promoting a ''common business interest'' in the case of a section 501(c)(6) organization) do not include candidate-related political activity as defined in these proposed regulations. The Treasury Department and the IRS request comments on the advisability of adopting this approach in defining activities that do not further exempt purposes under sections 501(c)(5) and 501(c)(6). Any such change would be introduced in the form of proposed regulations to allow an additional opportunity for public comment.

d. Additional Guidance on the Meaning of ''Operated Exclusively for the Promotion of Social Welfare''

The Treasury Department and the IRS have received requests for guidance on the meaning of ''primarily'' as used in the current regulations under section 501(c)(4). The current regulations provide, in part, that an organization is operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) if it is ''primarily engaged'' in promoting in some way the common good and general welfare of the people of the community. Treas. Reg. § 1.501(c)(4)–1(a)(2)(i). As part of the same 1959 Treasury decision promulgating the current section 501(c)(4) regulations, regulations under section 501(c)(3) were adopted containing similar language: ''[a]n organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3).'' Treas. Reg. § 1.501(c)(3)–1(c)(1). Unlike the section 501(c)(4) regulations, however, the section 501(c)(3) regulations also provide that ''[a]n organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.'' *Id.*

Some have questioned the use of the ''primarily'' standard in the section 501(c)(4) regulations and suggested that this standard should be changed. The Treasury Department and the IRS are considering whether the current section 501(c)(4) regulations should be modified in this regard and, if the ''primarily'' standard is retained, whether the standard should be defined with more precision or revised to mirror the standard under the section 501(c)(3) regulations. Given the potential impact on organizations currently recognized as described in section 501(c)(4) of any change in the ''primarily'' standard, the

Treasury Department and the IRS wish to receive comments from a broad range of organizations before deciding how to proceed. Accordingly, the Treasury Department and the IRS invite comments from the public on what proportion of an organization's activities must promote social welfare for an organization to qualify under section 501(c)(4) and whether additional limits should be imposed on any or all activities that do not further social welfare. The Treasury Department and the IRS also request comments on how to measure the activities of organizations seeking to qualify as section 501(c)(4) social welfare organizations for these purposes.

*2. Definition of Candidate-Related Political Activity*

These proposed regulations provide guidance on which activities will be considered candidate-related political activity for purposes of the regulations under section 501(c)(4). These proposed regulations would replace the language in the existing final regulation under section 501(c)(4)—''participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office''—with a new term—''candidate-related political activity''—to differentiate the proposed section 501(c)(4) rule from the standard employed under section 501(c)(3) (and currently employed under section 501(c)(4)). The proposed rule is intended to help organizations and the IRS more readily identify activities that constitute candidate-related political activity and, therefore, do not promote social welfare within the meaning of section 501(c)(4). These proposed regulations do not otherwise define the promotion of social welfare under section 501(c)(4). The Treasury Department and the IRS note that the fact that an activity is not candidate-related political activity under these proposed regulations does not mean that the activity promotes social welfare. Whether such an activity promotes social welfare is an independent determination.

In defining candidate-related political activity for purposes of section 501(c)(4), these proposed regulations draw key concepts from the federal election campaign laws, with appropriate modifications reflecting the purpose of these regulations to define which organizations may receive the benefits of section 501(c)(4) tax-exempt status and to promote tax compliance (as opposed to campaign finance regulation). In addition, the concepts drawn from the federal election campaign laws have been modified to reflect that section 501(c)(4) organizations may be involved in activities related to local or state elections (in addition to federal elections), as well as the broader scope of the proposed definition of candidate (which is not limited to candidates for federal elective office).

The proposed regulations provide that candidate-related political activity includes activities that the IRS has traditionally considered to be political campaign activity per se, such as contributions to candidates and communications that expressly advocate for the election or defeat of a candidate. The proposed regulations also would treat as candidate-related political activity certain activities that, because they occur close in time to an election or are election-related, have a greater potential to affect the outcome of an election. Currently, such activities are subject to a facts and circumstances analysis before a determination can be made as to whether the activity furthers social welfare within the meaning of section 501(c)(4). Under the approach in these proposed regulations, such activities instead would be subject to a more definitive rule. In addition, consistent with the goal of providing greater clarity, the proposed regulations would identify certain specific activities as candidate-related political activity. The Treasury Department and the IRS acknowledge that the approach taken in these proposed regulations, while clearer, may be both more restrictive and more permissive than the current approach, but believe the proposed approach is justified by the need to provide greater certainty to section 501(c)(4) organizations regarding their activities and reduce the need for fact-intensive determinations.

The Treasury Department and the IRS note that a particular activity may fit within one or more categories of candidate-related political activity described in subsections b through e of this section 2 of the preamble; the categories are not mutually exclusive. For example, the category of express advocacy communications may overlap with the category of certain communications close in time to an election.

a. Definition of ''Candidate''

These proposed regulations provide that, consistent with the scope of section 527, ''candidate'' means an individual who identifies himself or is proposed by another for selection, nomination, election, or appointment to any public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not the individual is ultimately selected, nominated, elected, or appointed. In addition, the proposed regulations clarify that for these purposes the term ''candidate'' also includes any officeholder who is the subject of a recall election. The Treasury Department and the IRS note that defining ''candidate-related political activity'' in these proposed regulations to include activities related to candidates for a broader range of offices (such as activities relating to the appointment or confirmation of executive branch officials and judicial nominees) is a change from the historical application in the section 501(c)(4) context of the section 501(c)(3) standard of political campaign intervention, which focuses on candidates for elective public office only. See Treas. Reg. § 1.501(c)(3)–1(c)(3)(iii). These proposed regulations instead would apply a definition that reflects the broader scope of section 527 and that is already applied to a section 501(c)(4) organization engaged in section 527 exempt function activity through section 527(f).

b. Express Advocacy Communications

These proposed regulations provide that candidate-related political activity includes communications that expressly advocate for or against a candidate. These proposed regulations draw from Federal Election Commission rules in defining ''expressly advocate,'' but expand the concept to include communications expressing a view on the selection, nomination, or appointment of individuals, or on the election or defeat of one or more candidates or of candidates of a political party. These proposed regulations make clear that all communications—including written, printed, electronic (including Internet), video, and oral communications—that express a view, whether for or against, on a clearly identified candidate (or on candidates of a political party) would constitute candidate-related political activity. A candidate can be ''clearly identified'' in a communication by name, photograph, or reference (such as ''the incumbent'' or a reference to a particular issue or characteristic distinguishing the candidate from others). The proposed regulations also provide that candidate-related political activity includes any express advocacy communication the expenditures for which an organization reports to the Federal Election Commission under the Federal Election Campaign Act as an independent expenditure.

c. Public Communications Close in Time to an Election

Under current guidance, the timing of a communication about a candidate that is made shortly before an election is a factor tending to indicate a greater risk of political campaign intervention or section 527 exempt function activity. In the interest of greater clarity, these proposed regulations would move away from the facts and circumstances approach that the IRS has traditionally applied in analyzing certain activities conducted close in time to an election. These proposed regulations draw from provisions of federal election campaign laws that treat certain communications that are close in time to an election and that refer to a clearly identified candidate as electioneering communications, but make certain modifications. The proposed regulations expand the types of candidates and communications that are covered to reflect the types of activities an organization might conduct related to local and state, as well as federal, contests, including any election or ballot measure to recall an individual who holds state or local elective public office. In addition, the expansion of the types of communications covered in the proposed regulations reflects the fact that an organization's tax exempt status is determined based on all of its activities, even low cost and volunteer activities, not just its large expenditures.

Under the proposed definition, any public communication that is made within 60 days before a general election or 30 days before a primary election and that clearly identifies a candidate for public office (or, in the case of a general election, refers to a political party represented in that election) would be considered candidate-related political activity. These timeframes are the same as those appearing in the Federal Election Campaign Act definition of electioneering communications. The definition of ''election,'' including what would be treated as a primary or a general election, is consistent with section 527(j) and the federal election campaign laws.

A communication is ''public'' if it is made using certain mass media (specifically, by broadcast, in a newspaper, or on the Internet), constitutes paid advertising, or reaches or is intended to reach at least 500 people (including mass mailings or telephone banks). The Treasury Department and the IRS intend that content previously posted by an organization on its Web site that clearly identifies a candidate and remains on the Web site during the specified pre-election period would be treated as candidate-related political activity.

The proposed regulations also provide that candidate-related political activity includes any communication the expenditures for which an organization reports to the Federal Election Commission under the Federal Election Campaign Act, including electioneering communications.

The approach taken in the proposed definition of candidate-related political activity would avoid the need to consider potential mitigating or aggravating circumstances in particular cases (such as whether an issue-oriented communication is ''neutral'' or ''biased'' with respect to a candidate). Thus, this definition would apply without regard to whether a public communication is intended to influence the election or some other, non-electoral action (such as a vote on pending legislation) and without regard to whether such communication was part of a series of similar communications. Moreover, a public communication made outside the 60-day or 30-day period would not be candidate-related political activity if it does not fall within the ambit of express advocacy communications or another specific provision of the definition. The Treasury Department and the IRS request comments on whether the length of the period should be longer (or shorter) and whether there are particular communications that (regardless of timing) should be excluded from the definition because they can be presumed to neither influence nor constitute an attempt to influence the outcome of an election. Any comments should specifically address how the proposed exclusion is consistent with the goal of providing clear rules that avoid fact-intensive determinations.

The Treasury Department and the IRS also note that this rule regarding public communications close in time to an election would not apply to public communications identifying a candidate for a state or federal appointive office that are made within a specified number of days before a scheduled appointment, confirmation hearing or vote, or other selection event. The Treasury Department and the IRS request comments on whether a similar rule should apply with respect to communications within a specified period of time before such a scheduled appointment, confirmation hearing or vote, or other selection event.

d. Contributions to a Candidate, Political Organization, or any Section 501(c) Entity Engaged in Candidate-Related Political Activity

The proposed definition of candidate-related political activity would include contributions of money or anything of value to or the solicitation of contributions on behalf of (1) any person if such contribution is recognized under applicable federal, state, or local campaign finance law as a reportable contribution; (2) any political party, political committee, or other section 527 organization; or (3) any organization described in section 501(c) that engages in candidate-related political activity within the meaning of this proposed rule. This definition of contribution is similar to the definition of contribution that applies for purposes of section 527. The Treasury Department and the IRS intend that the term ''anything of value'' would include both in-kind donations and other support (for example, volunteer hours and free or discounted rentals of facilities or mailing lists). The Treasury Department and the IRS request comments on whether other transfers, such as indirect contributions described in section 276 to political parties or political candidates, should be treated as candidate-related political activity.

The Treasury Department and the IRS recognize that a section 501(c)(4) organization making a contribution may not know whether a recipient section 501(c) organization engages in candidate-related political activity. The proposed regulations provide that, for purposes of this definition, a recipient organization would not be treated as a section 501(c) organization engaged in candidate-related political activity if the contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in any such activity and the contribution is subject to a written restriction that it not be used for candidate-related political activity. This special provision would apply only if the contributor organization does not know or have reason to know that the representation is inaccurate or unreliable.

e. Election-Related Activities

The proposed definition of candidate-related political activity would include certain specified election-related activities, including the conduct of voter registration and get-out-the-vote drives, distribution of material prepared by or on behalf of a candidate or section 527 organization, and preparation or

distribution of a voter guide and accompanying material that refers to a candidate or a political party. In addition, an organization that hosts an event on its premises or conducts an event off-site within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program (whether or not such appearance was previously scheduled) would be engaged in candidate-related political activity under the proposed definition.

The Treasury Department and the IRS acknowledge that under the facts and circumstances analysis currently used for section 501(c)(4) organizations as well as for section 501(c)(3) organizations, these election-related activities may not be considered political campaign intervention if conducted in a non-partisan and unbiased manner. However, these determinations are highly fact-intensive. The Treasury Department and the IRS request comments on whether any particular activities conducted by section 501(c)(4) organizations should be excepted from the definition of candidate-related political activity as voter education activity and, if so, a description of how the proposed exception will both ensure that excepted activities are conducted in a non-partisan and unbiased manner and avoid a fact-intensive analysis.

f. Attribution to a Section 501(c)(4) Organization of Certain Activities and Communications

These proposed regulations provide that activities conducted by an organization include, but are not limited to, (1) activities paid for by the organization or conducted by the organization's officers, directors, or employees acting in that capacity, or by volunteers acting under the organization's direction or supervision; (2) communications made (whether or not such communications were previously scheduled) as part of the program at an official function of the organization or in an official publication of the organization; and (3) other communications (such as television advertisements) the creation or distribution of which is paid for by the organization. These proposed regulations also provide that an organization's Web site is an official publication of the organization, so that material posted by the organization on its Web site may constitute candidate-related political activity. The proposed regulations do not specifically address material posted by third parties on an organization's Web site. The Treasury Department and the IRS request comments on whether, and under what circumstances, material posted by a third party on an interactive part of the organization's Web site should be attributed to the organization for purposes of this rule. In addition, the Treasury Department and the IRS have stated in guidance under section 501(c)(3) regarding political campaign intervention that when a charitable organization chooses to establish a link to another Web site, the organization is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. See Rev. Rul. 2007–41. The Treasury Department and the IRS request comments on whether the consequences of establishing and maintaining a link to another Web site should be the same or different for purposes of the proposed definition of candidate-related political activity.

**Proposed Effective/Applicability Date**

These regulations are proposed to be effective the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For proposed date of applicability, see § 1.501(c)(4)–1(c).

**Statement of Availability for IRS Documents**

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at *http://www.irs.gov* or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**Special Analyses**

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that only a minimal burden would be imposed by the rule, if adopted. Under the proposal, if a section 501(c)(4) organization chooses to contribute to a section 501(c) organization and wants assurance that the contribution will not be treated as candidate-related political activity, it may seek a written representation that the recipient does not engage in candidate-related political activity within the meaning of these regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS generally request comments on all aspects of the proposed rules. In particular, the Treasury Department and the IRS request comments on whether there are other specific activities that should be included in, or excepted from, the definition of candidate-related political activity for purposes of section 501(c)(4). Such comments should address how the proposed addition or exception is consistent with the goals of providing more definitive rules and reducing the need for fact-intensive analysis of the activity. All comments submitted by the public will be made available for public inspection and copying at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Amy F. Giuliano, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.501(c)(4)–1 is proposed to be amended by revising the first sentence of paragraph (a)(2)(ii) and adding paragraphs (a)(2)(iii) and (c) to read as follows:

### § 1.501(c)(4)–1 Civic organizations and local associations of employees.

(a) * * *

(2) * * *

(ii) * * * The promotion of social welfare does not include direct or indirect candidate-related political activity, as defined in paragraph (a)(2)(iii) of this section. * * *

(iii) *Definition of candidate-related political activity*—(A) *In general.* For purposes of this section, candidate-related political activity means:

(*1*) Any communication (as defined in paragraph (a)(2)(iii)(B)(*3*) of this section) expressing a view on, whether for or against, the selection, nomination, election, or appointment of one or more clearly identified candidates or of candidates of a political party that—

(*i*) Contains words that expressly advocate, such as ''vote,'' ''oppose,'' ''support,'' ''elect,'' ''defeat,'' or ''reject;'' or

(*ii*) Is susceptible of no reasonable interpretation other than a call for or against the selection, nomination, election, or appointment of one or more candidates or of candidates of a political party;

(*2*) Any public communication (defined in paragraph (a)(2)(iii)(B)(*5*) of this section) within 30 days of a primary election or 60 days of a general election that refers to one or more clearly identified candidates in that election or, in the case of a general election, refers to one or more political parties represented in that election;

(*3*) Any communication the expenditures for which are reported to the Federal Election Commission, including independent expenditures and electioneering communications;

(*4*) A contribution (including a gift, grant, subscription, loan, advance, or deposit) of money or anything of value to or the solicitation of contributions on behalf of—

(*i*) Any person, if the transfer is recognized under applicable federal, state, or local campaign finance law as a reportable contribution to a candidate for elective office;

(*ii*) Any section 527 organization; or

(*iii*) Any organization described in section 501(c) that engages in candidate-related political activity within the meaning of this paragraph (a)(2)(iii) (see special rule in paragraph (a)(2)(iii)(D) of this section);

(*5*) Conduct of a voter registration drive or ''get-out-the-vote'' drive;

(*6*) Distribution of any material prepared by or on behalf of a candidate or by a section 527 organization including, without limitation, written materials, and audio and video recordings;

(*7*) Preparation or distribution of a voter guide that refers to one or more clearly identified candidates or, in the case of a general election, to one or more political parties (including material accompanying the voter guide); or

(*8*) Hosting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program.

(B) *Related definitions.* The following terms are defined for purposes of this paragraph (a)(2)(iii) only:

(*1*) ''*Candidate*'' means an individual who publicly offers himself, or is proposed by another, for selection, nomination, election, or appointment to any federal, state, or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not such individual is ultimately selected, nominated, elected, or appointed. Any officeholder who is the subject of a recall election shall be treated as a candidate in the recall election.

(*2*) ''*Clearly identified*'' means the name of the candidate involved appears, a photograph or drawing of the candidate appears, or the identity of the candidate is apparent by reference, such as by use of the candidate's recorded voice or of terms such as ''the Mayor,'' ''your Congressman,'' ''the incumbent,'' ''the Democratic nominee,'' or ''the Republican candidate for County Supervisor.'' In addition, a candidate may be ''clearly identified'' by reference to an issue or characteristic used to distinguish the candidate from other candidates.

(*3*) ''*Communication*'' means any communication by whatever means, including written, printed, electronic (including Internet), video, or oral communications.

(*4*) ''*Election*'' means a general, special, primary, or runoff election for federal, state, or local office; a convention or caucus of a political party that has authority to nominate a candidate for federal, state or local office; a primary election held for the selection of delegates to a national nominating convention of a political party; or a primary election held for the expression of a preference for the nomination of individuals for election to the office of President. A special election or a runoff election is treated as a primary election if held to nominate a candidate. A convention or caucus of a political party that has authority to nominate a candidate is also treated as a primary election. A special election or a runoff election is treated as a general election if held to elect a candidate. Any election or ballot measure to recall an individual who holds state or local elective public office is also treated as a general election.

(*5*) ''*Public communication*'' means any communication (as defined in paragraph (a)(2)(iii)(B)(*3*) of this section)—

(*i*) By broadcast, cable, or satellite;

(*ii*) On an Internet Web site;

(*iii*) In a newspaper, magazine, or other periodical;

(*iv*) In the form of paid advertising; or

(*v*) That otherwise reaches, or is intended to reach, more than 500 persons.

(*6*) ''*Section 527 organization*'' means an organization described in section 527(e)(1) (including a separate segregated fund described in section 527(f)(3)), whether or not the organization has filed notice under section 527(i).

(C) *Attribution.* For purposes of this section, activities conducted by an organization include activities paid for by the organization or conducted by an officer, director, or employee acting in that capacity or by volunteers acting under the organization's direction or supervision. Communications made by an organization include communications the creation or distribution of which is paid for by the organization or that are made in an official publication of the organization (including statements or material posted by the organization on its Web site), as part of the program at an official function of the organization, by an officer or director acting in that capacity, or by an employee, volunteer, or other representative authorized to communicate on behalf of the organization and acting in that capacity.

(D) *Special rule regarding contributions to section 501(c) organizations.* For purposes of paragraph (a)(2)(iii)(A)(*4*) of this section, a contribution to an organization described in section 501(c) will not be treated as a contribution to an organization engaged in candidate-related political activity if—

(*1*) The contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient

organization does not engage in such activity (and the contributor organization does not know or have reason to know that the representation is inaccurate or unreliable); and

(*2*) The contribution is subject to a written restriction that it not be used for candidate-related political activity within the meaning of this paragraph (a)(2)(iii).

(c) *Effective/applicability date.* Paragraphs (a)(2)(ii) and (iii) of this section apply on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2013–28492 Filed 11–26–13; 4:15 pm]

**BILLING CODE 4830–01–P**

---

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 31

**[REG–146620–13]**

**RIN 1545–BL92**

## Authority for Voluntary Withholding on Other Payments

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

**ACTION:** Notice of proposed rulemaking and notice of proposed rulemaking by cross reference to temporary regulations.

**SUMMARY:** This document contains proposed regulations under the Internal Revenue Code (Code) relating to voluntary withholding agreements. In the Rules and Regulations of this issue of the **Federal Register**, the IRS is also issuing temporary regulations to allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The text of those temporary regulations also generally serves as the text of these proposed regulations. The regulations affect persons making and persons receiving payments for which the IRS issues subsequent guidance authorizing the parties to enter into voluntary withholding agreements.

**DATES:** Written or electronic comments and requests for a public hearing must be received by February 25, 2014.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–146620–13), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–146620–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–146620–13).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Linda L. Conway-Hataloski at (202) 317–6798; concerning submission of comments and request for hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317–5179 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 3402(p) allows for voluntary income tax withholding agreements. Section 3402(p)(3) authorizes the Secretary to provide regulations for withholding from (A) remuneration for services performed by an employee for the employee's employer which does not constitute wages, and (B) from any other payment with respect to which the Secretary finds that withholding would be appropriate, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Section 3402(p)(3) also authorizes the Secretary to prescribe in regulations the form and manner of such agreement. Section 31.3402(p)–1 of the Employment Tax Regulations describes how an employer and an employee may enter into an income tax withholding agreement under section 3402(p) for amounts that are excepted from the definition of wages in section 3401(a).

### Explanation of Provisions

The proposed regulations amend the headings to paragraphs (a) and (b) of § 31.3402(p)–1 to clarify that those paragraphs apply to voluntary withholding agreements between an employer and employee. Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** also amend the Employment Tax Regulations (26 CFR part 31) under section 3402(p). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

### Special Analyses

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 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the **ADDRESSES** heading in this preamble. The IRS and Treasury Department request comments on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Linda L. Conway-Hataloski, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 31.3402(p)–1 is amended by:

■ 1. Revising the headings of paragraphs (a) and (b).
■ 2. Removing the language ''3402(b)'' in the first sentence and ''3402(p)'' in the third sentence and adding ''3402(p)(3)(A)'' in its place as it appears in paragraph (a) and the five places ''3402(p) as it appears in paragraph (b).
■ 3. Adding paragraphs (c) and (d).

The revisions and additions read as follows:

**§ 31.3402(p)–1 Voluntary Withholding Agreements.**

(a) *Employer-employee agreement.* * * *

* * * * *

(b) *Form and duration of employer-employee agreement.* * * *

* * * * *

(c) [The text of this paragraph (c) is the same as the text of paragraph (c) of § 31.3402(p)–1T published elsewhere in this issue of the **Federal Register**].

(d) [The text of this paragraph (d) is the same as the text of paragraph (d)(1) of § 31.3402(p)–1T published elsewhere in this issue of the **Federal Register**].

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2013–28529 Filed 11–27–13; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2013–0898]**

**RIN 1625–AA08**

## Special Local Regulation; Tavares Winter Thunder Vintage Race Boat Regatta, Lake Dora; Tavares, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a special local regulation on the waters of Lake Dora in Tavares, Florida during the Tavares Winter Thunder Vintage Race Regatta, a series of high-speed boat races. The event is scheduled for January 17 through 19, 2014. Approximately 60 vessels are anticipated to participate in the races. This proposed special local regulation is necessary to ensure the safety of life on navigable waters of the United States during the races. The special local regulation would establish two areas: A race area, where all persons and vessels, except those participating in the races, are prohibited from entering, transiting, anchoring, or remaining; and a buffer zone around the race area, where all persons and vessels, except those enforcing the buffer zone or authorized participants and vessels transiting to the race area, are prohibited from entering, transiting, anchoring, or remaining, unless authorized by the Captain of the Port Jacksonville or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 30, 2013. Requests for public meetings must be received by the Coast Guard on or before December 30, 2013.

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

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

(2) *Fax:* 202–493–2251.

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

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Shane Alexander, Sector Jacksonville Office of Waterways Management, U.S. Coast Guard; telephone (904) 564–7563, email *Shane.L.Alexander@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

### A. Public Participation and Request for Comments

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

*1. Submitting Comments*

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

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2013–0898] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number [USCG–2013–0898] 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 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. Basis and Purpose**

The legal basis for the proposed rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the proposed rule is to ensure safety of life on navigable waters of the United States during the Tavares Winter Thunder Vintage Race Boat Regatta.

**C. Discussion of Proposed Rule**

On January 17 to January 19, 2014, Classic Race Boat Association will host the Tavares Winter Thunder Vintage Race Boat Regatta, an exhibition of vintage and classic race boats including in water demonstrations. The Tavares Winter Thunder Vintage Race Boat Regatta will be held on Lake Dora in Tavares, Florida. Approximately 60 vessels are anticipated to participate in the races. Approximately 10 spectator vessels are expected to attend the Tavares CRA Fall Thunder Regatta.

The proposed rule will establish a special local regulation that encompasses certain waters of Lake Dora in Tavares, Florida. The proposed special local regulation will be enforced from 8:30 a.m. until 5 p.m. on January 17 to 19, 2014. This special local regulation is necessary to ensure the safety of life on navigable waters of the United States during the races. The special local regulation will consist of the following two areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, or authorized participants transiting to and from the race area, are prohibited from entering, transiting, anchoring, or remaining unless authorized by the Captain of the Port Jacksonville or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

**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 a number of 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this proposed rule is not significant for the following reasons: (1) The special local regulation will be enforced for only 25.5 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area or buffer zone without being an authorized participant or enforcing the buffer zone, or receiving authorization from the Captain of the Port Jacksonville or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) nonparticipant persons and vessels may still enter, transit through, anchor in, or remain within the race area or buffer zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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

This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Lake Dora encompassed within the special local regulation from 8:30 a.m. until 5 p.m. on January 17 to 19, 2014. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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. 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 will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this 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. This proposed rule involves the creation of a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary 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 proposed rule.

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

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS.

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

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

■ 2. Add a temporary § 100.35T07–0816 to read as follows:

### § 100.35T07–0816 Special Local Regulations; Tavares Winter Thunder Vintage Race Boat Regatta, Lake Dora; Tavares, FL.

(a) *Regulated Areas.* The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) Race Area. All waters of Lake Dora encompassed within the following points: starting at Point 1 in position 28°47′57.00″ N, 81°43′41.00″ W; thence southwest to Point 2 in position 28°47′55.71″ N, 81°43′42.00″ W; thence south to Point 3 in position 28°47′53.99″ N, 81°43′40.05″ W; thence east to Point 4 in position 28°47′56.52″ N, 81°43′28.46″ W; thence northeast to Point 5 in position 28°47′58.80″ N, 81°43′27.51″ W; thence north to Point 6 in position 28°47′59.60″ N, 81°43′28.00″ W; thence west back to origin. All persons and vessels, except those persons and vessels participating in the high-speed boat races, the Captain of the Port of Jacksonville or designated representatives, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) Buffer Zone. All waters of Lake Dora, excluding the race area, encompassed within the following points: starting at Point 1 in position 28°47′58.37″ N, 81°43′48.28″ W; thence southeast to Point 2 in position 28°47′49.08″ N, 81°43′43.44″ W; thence northeast to Point 3 in position 28°47′54.89″ N, 81°43′20.38″ W; thence north to Point 4 in position 28°48′03.44″ N, 81°43′25.04″ W; thence west following the shoreline back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone, or authorized participants transiting to or from the race area, are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from:

(a) Entering, transiting through, anchoring in, or remaining within the race area unless participating in the race.

(b) Entering, transiting through, anchoring in, or remaining within the buffer zone, unless enforcing the buffer zone or an authorized race participant transiting to or from the race area.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16, to request authorization. If authorization is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas to the public by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced from 8:30 a.m. until 5 p.m. on January 17 through 19, 2014.

Dated: November 14, 2013.

**T. G. Allan, Jr.,**

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

[FR Doc. 2013–28580 Filed 11–27–13; 8:45 am]

**BILLING CODE 9110–04–P**

---

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2013–0471]**

**RIN 1625–AA00**

## Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone on the navigable waters of Gerritsen Inlet surrounding the Belt Parkway Bridge. This proposed rule would allow the Coast Guard to prohibit all vessel traffic through the safety zone during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the regulated area during the construction of the Bridge.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 30, 2013.

Requests for public meetings must be received by the Coast Guard on or before December 20, 2013.

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

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

(2) *Fax:* 202–493–2251.

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

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division; telephone (718) 354–4195, email *jeff.m.yunker@uscg.mil* or Chief Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone (617) 223–8351, email *craig.d.lapiejko@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0471] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0471) 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 on or before December 20, 2013, using one of the 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**

In a letter received by the Coast Guard on May 16, 2013 the New York City Department of Transportation (NYC DOT) and their contractors outlined the first five phases of operations that require in-channel work in the construction and demolition of Belt Parkway Bridge. There is no previous regulatory action for this Bridge.

**C. Basis and Purpose**

The legal basis for the proposed rule is 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, and 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 regulatory safety zones. This purpose of this proposed rulemaking is to ensure the safety of vessels and workers from hazards associated with the bridge construction operations in the regulated area.

A navigation safety situation created by construction of the new Belt Parkway Bridge and removal of the current Belt Parkway Bridge prompted the proposed rule. This bridge carries the Shore Parkway (also referred to as the Belt Parkway) over Gerritsen Inlet. The current Belt Parkway Bridge was built in 1940 and no longer meets current federal and state safety standards. The New York City Department of Transportation (NYC DOT) has contracted China Construction U.S. and J. T. Cleary Inc. to construct a new fixed replacement bridge and remove the current fixed bridge. Construction is scheduled to begin September 15, 2013. Scheduled completion of the new bridge and removal of the old bridge is 2017.

The Coast Guard has discussed this project with NYC DOT, China Construction U.S., and J.T. Cleary Inc. to determine whether the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterways closures, there are certain tasks that can only be completed in the channel and will require closing the waterway.

Specifically, installed heavy steel support beams will be built on land, and then floated by barge to the site. These steel beams will then be lifted and installed in two new bridge piers that will support the new bridge and roadway. The current bridge and support piers will be dismantled into small sections and placed on a barge for removal from the construction site. These two processes will be complex and present many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the channel with a restricted ability to maneuver.

The Coast Guard received a letter on May 16, 2013, in which the contractors outlined the first five phases of operations that require in-channel work, one of which will require two waterway closures. NYC DOT will notify the Coast Guard as far in advance as possible if additional closures are needed.

**D. Discussion of Proposed Rule**

The Coast Guard's proposed rule would give the Captain of the Port New York (COTP) the authority to prohibit vessel traffic on this portion of Gerritsen Inlet when necessary for the safety of vessels and workers during construction work in the channel. The Coast Guard would close the designated area to all traffic during any circumstance, planned or unforeseen, that pose an imminent threat to waterway users or construction operations in the area. Complete waterway closures would be minimized to that period absolutely necessary and made with as much advanced notice as possible. During closures there would not be enough space for mariners to transit through the safety zone between the construction vessels and the current bridge piers. The COTP would cause notice of enforcement to be made by appropriate means and ensure the widest distribution among the affected segments of the public.

Initial enforcement periods are currently anticipated to be from December 1, 2013 to February 28, 2014 and from May 1, 2014 to June 30, 2014. The purpose of these closures is to float in steel beams for the new bridge piers to be installed by a floating crane barge. The crane barge and supply barge carrying the steel beams will take up the width of the channel, causing a closure of the channel. Once the barges are in place and the installation of the steel beams begins the barges cannot move out of the channel. To minimize impacts to boaters upstream of the bridge the contractor will only conduct these operations on weekdays from Monday at 6 a.m. until Friday at 7 p.m.

**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 a number of 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: Vessel traffic would only be restricted from the safety zone during weekdays, recreational boaters would still be able to transit the safety zone on weekends, the first closure would be during the winter months when recreational boating is severely limited due to local weather conditions, and the second closure would be early in the recreational boating season that traditionally begins around the Memorial Day weekend in late May.

Advanced public notifications would also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners and at *http://homeport.uscg.mil/newyork* which would allow the public an opportunity to plan for these closures.

*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 will not have a significant economic impact on

a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within, or upstream of the safety zone during a vessel restriction period.

The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will be of limited size and most waterway closures will be during times of reduced recreational boating traffic. The contractor has hired outreach consultants to ensure local interests are regularly notified of the project status and future impacts that can be expected. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means.

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

*5. Federalism*

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

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this 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 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. This proposed rule involves restricting vessel movement within a safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is 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 proposed rule.

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

Marine safety, Navigation (water), Reporting and record keeping requirements, 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 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. Add § 165.T01–0471 to read as follows:

**§ 165. T01–0471 Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY.**

(a) *Location.* The following area is a safety zone: All navigable waters of Gerritsen Inlet: Southeast of a line from 40°35′09.46″ N, 073°54′53.92″ W to 40°35′10.0″ N, 073°54′44.5″ W and Northwest of a line from 40°35′04.88″ N, 073°54′45.43″ W to 40°35′10.34″ N, 073°54′35.71″ W. (NAD 83)

(b) *Definitions.* The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) *Enforcement Periods.*

(1) This rule is enforceable from December 1, 2013 through September 30, 2017.

(2) The COTP will give notice of enforcement by appropriate means to inform the affected segments of the public, and such notification will include dates and times. Means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(d) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP's designated representative.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: October 23, 2013.

**G. Loebl,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

[FR Doc. 2013–28589 Filed 11–27–13; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF EDUCATION

## 34 CFR Part 300

**[DOCKET ID ED–2012–OSERS–0020]**

**RIN 1820–AB65**

## Assistance to States for the Education of Children with Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking; extension of public comment period.

**SUMMARY:** On September, 18, 2013, we published in the **Federal Register** a notice of proposed rulemaking regarding local maintenance of effort to clarify existing policy and make other related changes. This notice established a December 2, 2013, deadline for the submission of written comments. We are extending the comment period to December 10, 2013.

**DATES:** For the proposed rule published September 18, 2013 (78 FR 57324), comments must be received on or before December 10, 2013.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under ''Are you new to the site?''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Mary Louise Dirrigl, U.S. Department of Education, 400 Maryland Avenue SW., room 5103, Potomac Center Plaza, Washington, DC 20202–2600.
- *Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Mary Louise Dirrigl, U.S. Department of Education, 400 Maryland Avenue SW., room 5103, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7605.

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

**SUPPLEMENTARY INFORMATION:**

*Background:* On September 18, 2013, in a notice of proposed rulemaking in the **Federal Register** (78 FR 57324), the Secretary proposed to amend the regulations under Part B of the Individuals with Disabilities Education Act (IDEA) regarding local maintenance of effort. The Secretary proposed to clarify existing policy and make other related changes regarding (1) the compliance standard; (2) the eligibility standard; (3) the level of effort required of a local educational agency (LEA) in the year after it fails to maintain effort under the IDEA; and (4) the consequence for a failure to maintain local effort. The Secretary also sought comment on whether States and LEAs or other interested parties think these proposed amendments will be helpful in increasing understanding of, and ensuring compliance with, the current local maintenance of effort requirements. Specifically, the Secretary sought comment from States and LEAs to identify where they are experiencing the most problems in implementing the maintenance of effort requirements.

The notice of proposed rulemaking established a December 2, 2013, deadline for the submission of written comments. However, *www.regulations.gov*, the Government-wide portal that allows the public to comment electronically on notices in the **Federal Register**, was unavailable most of November 4–6, 2013, and November 10–12, 2013. To ensure that anyone unable to comment during that period has the opportunity to do so, we are extending the closing date of the comment period to December 10, 2013.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department

published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 25, 2013.

**Michael K. Yudin,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013–28667 Filed 11–27–13; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2011–0833; FRL–9903–25–Region–8]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Colorado Second Ten-Year $PM_{10}$ Maintenance Plan for Telluride

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Colorado. On March 31, 2010, the Governor of Colorado's designee submitted to EPA a revised maintenance plan for the Telluride area for the 24-hour National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns ($PM_{10}$), which was adopted on November 19, 2009. As required by Clean Air Act (CAA) section 175A(b), this revised maintenance plan addresses maintenance of the $PM_{10}$ standard for a second 10-year period beyond the area's original redesignation to attainment for the $PM_{10}$ NAAQS. In addition, EPA is proposing to approve the revised maintenance plan's 2021 transportation conformity motor vehicle emissions budget for $PM_{10}$. Also, we are proposing to exclude from use in determining that Telluride continues to attain the $PM_{10}$ NAAQS exceedances of the $PM_{10}$ NAAQS that were recorded at the Telluride $PM_{10}$ monitor on April 5, 2010 and April 16, 2013, because they meet the criteria for exceptional events caused by high wind natural events. This action is being taken under sections 110 and 175A of the CAA.

**DATES:** Written comments must be received on or before December 30, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0833, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: ostigaard.crystal@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R08–OAR–2011–0833. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov*, your email address will 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 instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Crystal Ostigaard, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *APCD* mean or refer to the Colorado Air Pollution Control Division.

(iii) The initials *AQCC* mean or refer to the Colorado Air Quality Control Commission.

(iv) The initials *AQS* mean or refer to the EPA Air Quality System database.

(v) The words *Colorado* and *State* mean or refer to the State of Colorado.

(vi) The initials *CDOT* mean or refer to the Colorado Department of Transportation.

(vii) The initials *CDPHE* mean or refer to the Colorado Department of Public Health and Environment.

(viii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(ix) The initials *MVEB* mean or refer to motor vehicle emissions budget.

(x) The initials *NAAQS* mean or refer to National Ambient Air Quality Standard.

(xi) The initials $PM_{10}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).

(xii) The initials *RTP* mean or refer to the Regional Transportation Plan.

(xiii) The initials *SIP* mean or refer to State Implementation Plan.

(xiv) The initials *TIP* mean or refer to the Transportation Improvement Program.

(xv) The initials *TSD* mean or refer to technical support document.

**Table of Contents**

I. General Information
II. Background
III. What was the State's process?
IV. EPA's Evaluation of the Revised Telluride $PM_{10}$ Maintenance Plan
V. Proposed Action
VI. Statutory and Executive Orders Review

## I. General Information

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

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

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

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

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

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

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

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

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

## II. Background

The Telluride area was designated nonattainment for $PM_{10}$ and classified as moderate by operation of law upon enactment of the CAA Amendments of 1990. See 56 FR 56694, 56705, 56736 (November 6, 1991). EPA partially/conditionally approved Colorado's nonattainment area SIP for the Telluride $PM_{10}$ nonattainment area on September 19, 1994 (59 FR 47807) and fully approved the SIP on October 4, 1996 (61 FR 51784). On May 10, 2000, the Governor of Colorado submitted a request to EPA to redesignate the Telluride moderate $PM_{10}$ nonattainment area to attainment for the 1987 24-hour $PM_{10}$ NAAQS. Along with this request, the State submitted a maintenance plan, which demonstrated that the area was expected to remain in attainment of the 24-hour $PM_{10}$ NAAQS through 2012. EPA approved the Telluride maintenance plan and redesignation to attainment on June 15, 2001 (66 FR 32556).

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the state to submit a subsequent maintenance plan to EPA, covering a second 10-year period.[1] This second 10-year maintenance plan must demonstrate continued maintenance of the applicable NAAQS during this second 10-year period. To fulfill this requirement of the Act, the Governor of Colorado's designee submitted the second 10-year update of the $PM_{10}$ maintenance plan to EPA on March 31, 2010 (hereafter; ''revised Telluride $PM_{10}$ Maintenance Plan'').

As described in 40 CFR 50.6, the level of the national primary and secondary 24-hour ambient air quality standards for $PM_{10}$ is 150 micrograms per cubic meter (μg/m³). An area attains the 24-hour $PM_{10}$ standard when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as ''exceedance''), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one, averaged over a three-year period.[2] See 40 CFR 50.6 and 40 CFR part 50, appendix K.

Table 1 below shows the maximum monitored 24-hour $PM_{10}$ values for the Telluride $PM_{10}$ maintenance area for 2004 through 2012, excluding one value that the State flagged as being caused by an exceptional event. The table reflects that the values for the Telluride area were well below the 24-hour $PM_{10}$ NAAQS standard of 150 μg/m³. However, on April 5, 2010, the area experienced an exceedance measured at 354 μg/m³. The State flagged this value as a high wind exceptional event in EPA's Air Quality System (AQS), which is EPA's repository for ambient air quality data.

40 CFR 50.1(j) defines an exceptional event as an event which affects air quality, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event, and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. Exceptional events do not include stagnation of air masses or meteorological inversions, meteorological events involving high temperatures or lack of precipitation, or air pollution relating to source noncompliance. 40 CFR 5.14(b) states that EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a state demonstrates to EPA's satisfaction that an exceptional event caused a specific air pollution concentration in excess of one or more NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements of section 50.14.

The State submitted an exceptional event package on June 28, 2013 requesting EPA's concurrence on the flag for the April 5, 2010 exceedance. EPA completed its review of the exceptional events package for Telluride's 2010 exceedance and concurred on the flag on August 21,

[1] In this case, the initial maintenance period described in CAA section 175A(a) was required to extend for at least 10 years after the redesignation to attainment, which was effective on August 14, 2001. See 66 FR 32556. So the first maintenance plan was required to show maintenance at least through 2011. CAA section 175A(b) requires that the second 10-year maintenance plan maintain the NAAQS for ''10 years after the expiration of the 10-year period referred to in [section 175A(a)].'' Thus, for the Telluride area, the second 10-year period ends in 2021.

[2] An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 μg/m³, after rounding to the nearest 10 μg/m³ (i.e., values ending in five or greater are to be rounded up). Thus, a recorded value of 154 μg/m³ would not be an exceedance since it would be rounded to 150 μg/m³; whereas, a recorded value of 155 μg/m³ would be an exceedance since it would be rounded to 160 μg/m³. See 40 CFR part 50, appendix K, section 1.0.

2013 because the State successfully demonstrated that the exceedance on April 5, 2010 was caused by a natural high wind exceptional event due to blowing desert dust from upwind natural desert areas of Arizona, Utah, and southwest Colorado into the Telluride area.[3] Thus, we are proposing to exclude from use in determining that Telluride continues to attain the 24-hour $PM_{10}$ NAAQS the exceedance of the 24-hour $PM_{10}$ NAAQS that was recorded at the Telluride $PM_{10}$ monitor on April 5, 2010. See 40 CFR 50.14(b) and (c)(2)(ii). With the exclusion of this data point, the highest value in 2010 is 133 μg/m³, which is well below the 24-hour $PM_{10}$ NAAQS standard.

Additionally, EPA reviewed 2013 data from AQS (this data has not yet been quality assured by Colorado) and found a high wind exceptional event of 265 μg/m³ at the Telluride monitor on April 16, 2013. The State submitted the exceptional events package for this exceedance on October 3, 2013, and EPA concurred on the package on November 1, 2013, because the State successfully demonstrated that the exceedance on April 16, 2013 was caused by a natural high wind exceptional event blowing desert dust from upwind natural desert areas of Arizona, Utah, and southwest Colorado into the Telluride area.[4] Thus, we are proposing to exclude from use in determining that Telluride continues to attain the 24-hour $PM_{10}$ NAAQS the exceedance of the 24-hour $PM_{10}$ NAAQS that was recorded at the Telluride $PM_{10}$ monitor on April 16, 2013.

TABLE 1—TELLURIDE $PM_{10}$ MAXIMUM 24-HOUR VALUES

[Based on Data from 333 West Colorado Avenue, AQS Identification Number 08–113–0004]

| Year | Maximum Value (μg/m³) |
|---|---|
| 2004 | 72 |
| 2005 | 70 |
| 2006 | 69 |
| 2007 | 77 |
| 2008 | 82 |
| 2009 | 130 |
| 2010 | 133 |
| 2011 | 68 |
| 2012 | 80 |

Table 2 below shows the estimated number of exceedances for the Telluride $PM_{10}$ maintenance area for the three-year periods of 2004 through 2006, 2005 through 2007, 2006 through 2008, 2007 through 2009, 2008 through 2010, 2009 through 2011, and 2010 through 2012. To attain the standard, the three-year average number of expected exceedances (values greater than 150 μg/m³) must be less than or equal to one. The table reflects continuous attainment of the 24-hour $PM_{10}$ NAAQS.

TABLE 2—TELLURIDE $PM_{10}$ ESTIMATED EXCEEDANCES

[Based on Data from 333 West Colorado Avenue, AQS Identification Number 08–113–0004]

| Design value period | 3-Year estimated number of exceedances |
|---|---|
| 2004—2006 | 0 |
| 2005—2007 | 0 |
| 2006—2008 | 0 |
| 2007—2009 | 0 |
| 2008—2010 | 0 |
| 2009—2011 | 0 |
| 2010—2012 | 0 |

## III. What was the State's process?

Section 110(a)(2) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to EPA.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the revised Telluride $PM_{10}$ Maintenance Plan on November 19, 2009. The AQCC approved and adopted the revised Telluride $PM_{10}$ Maintenance Plan during the hearing. The Governor's designee submitted the revised plan to EPA on March 31, 2010.

We have evaluated the revised maintenance plan and have determined that the State met the requirements for reasonable public notice and public hearing under section 110(a)(2) of the CAA. On September 30, 2010, by operation of law under CAA section 110(k)(1)(B), the revised maintenance plan was deemed to have met the minimum ''completeness'' criteria found in 40 CFR part 51, appendix V.

## IV. EPA's Evaluation of the Revised Telluride $PM_{10}$ Maintenance Plan

The following are the key elements of a Maintenance Plan for $PM_{10}$: Emission Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Contingency Plan, and Transportation Conformity Requirements including the Motor Vehicle Emission Budget for $PM_{10}$. Below, we describe our evaluation of these elements as they pertain to the revised Telluride $PM_{10}$ Maintenance Plan.

### *A. Emission Inventory*

The revised Telluride $PM_{10}$ Maintenance Plan includes three inventories of daily $PM_{10}$ emissions for the Telluride area, for years 2007, 2015, and 2021. The Air Pollution Control Division (APCD) developed these emission inventories using EPA-approved emissions modeling methods and updated transportation and demographics data. Each emission inventory is a list, by source category, of the air contaminants directly emitted into the Telluride $PM_{10}$ maintenance area. A more detailed description of the 2007, 2015 and 2021 inventories and information on model assumptions and parameters for each source category are contained in the State's $PM_{10}$ Maintenance Plan Technical Support Document (TSD). Included in both inventories are agriculture, highway vehicle exhaust, railroads, road dust, commercial cooking, construction, fuel combustion, non-road sources, structure fires, and woodburning. We find that Colorado has prepared adequate emission inventories for the area.

### *B. Maintenance Demonstration*

The revised Telluride $PM_{10}$ Maintenance Plan uses emission roll-forward modeling to demonstrate maintenance of the 24-hour $PM_{10}$ NAAQS through 2021. Using the 2007 and 2021 emissions inventories, the State first determined the projected growth in $PM_{10}$ emissions from the 2007 base year to the 2021 maintenance year. The State estimated that emissions would increase from 1,285 pounds per day in 2007 to 1,989 pounds per day in 2021. This represents an increase of 54.8 percent.

The State then applied this percentage increase to the design day concentration of 82 μg/m³, which was the highest 24-hour maximum $PM_{10}$ value recorded in the Telluride area from 2006–2008. This resulted in an estimated maximum 24-hour $PM_{10}$ concentration in 2021 of 126.9 μg/m³. This is well below the 24-hour $PM_{10}$ NAAQS of 150 μg/m³.

### *C. Monitoring Network/Verification of Continued Attainment*

In the revised Telluride $PM_{10}$ Maintenance Plan, the State commits to continue to operate an air quality monitoring network in accordance with 40 CFR part 58 to verify continued attainment of the 24-hour $PM_{10}$ NAAQS. This includes the continued operation of a $PM_{10}$ monitor in the Telluride area, which the State will rely on to track $PM_{10}$ emissions in the maintenance

[3] Copies of the State's June 28, 2013 exceptional events package and our concurrence documents are included in the docket for this action.

[4] Copies of the State's October 3, 2013 exceptional events package and our concurrence documents are included in the docket for this action.

area. The State also commits to conduct an annual review of the air quality surveillance system in accordance with 40 CFR 58.20(d) to determine whether the system continues to meet the monitoring objectives presented in Appendix D of 40 CFR part 58. Additionally, the State commits to track and document $PM_{10}$ mobile source parameters and new and modified stationary source permits. If these and the resulting emissions change significantly over time, the APCD will perform appropriate studies to determine: (1) whether additional and/or re-sited monitors are necessary; and (2) whether mobile and stationary source emissions projections are on target.

Based on the above, we are proposing approval of these commitments as satisfying the relevant requirements.

*D. Contingency Plan*

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of an area. To meet this requirement the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in the revised Telluride $PM_{10}$ Maintenance Plan, the contingency measures will be triggered by a violation of the 24-hour $PM_{10}$ NAAQS. However, the maintenance plan notes that an exceedance of the 24-hour $PM_{10}$ NAAQS may initiate a voluntary, local process by the Town of Telluride, the Town of Mountain Village, San Miguel County and the APCD to identify and evaluate potential contingency measures.

The Town of Telluride, the Town of Mountain Village and San Miguel County in coordination with the APCD, AQCC, and the Colorado Department of Transportation (CDOT) will initiate a process to begin evaluating potential contingency measures no more than 60 days after notification from APCD that a violation of the 24-hour $PM_{10}$ NAAQS has occurred. The AQCC will then hold a public hearing to consider the contingency measures recommended by the Town of Telluride, the Town of Mountain Village, San Miguel County, APCD and CDOT along with any other contingency measures the AQCC determines may be appropriate to effectively address the violation. The State commits to adopt and implement any necessary contingency measures within one year after a violation occurs.

The State identifies the following as potential contingency measures in the revised Telluride $PM_{10}$ maintenance plan: (1) Increased street sweeping requirements; (2) expanded, mandatory use of alternative de-icers; (3) more stringent street sand specifications; (4) road paving requirements; (5) woodburning restrictions; (6) re-establishing new source review permitting requirements for stationary sources; and (7) other emission control measures appropriate for the area based on consideration of cost effectiveness, $PM_{10}$ emission reduction potential, economic and social considerations, or other factors.

We find that the contingency measures provided in the revised Telluride $PM_{10}$ Maintenance Plan are sufficient and meet the requirements of section 175A(d) of the CAA.

*E. Transportation Conformity Requirements: Motor Vehicle Emission Budget for $PM_{10}$*

Transportation conformity is required by section 176(c) of the CAA. EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. To effectuate its purpose, the conformity rule requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget(s) (MVEB(s)) contained in a control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area. Further information concerning EPA's interpretations regarding MVEBs can be found in the preamble to EPA's November 24, 1993, transportation conformity rule (see 58 FR 62193—62196).

The revised Telluride $PM_{10}$ Maintenance Plan contains a single MVEB of 1,108 lbs/day of $PM_{10}$ for the year 2021, the maintenance year. Once the State submitted the revised plan with the 2021 MVEB to EPA for approval, 40 CFR 93.118 required that EPA determine whether the MVEB was adequate.

Our criteria for determining whether a SIP's MVEB is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), which was promulgated August 15, 1997 (see 62 FR 43780). Our process for determining adequacy is described in our July 1, 2004 Transportation Conformity Rule Amendments (see 69 FR 40004) and in relevant guidance.[5] We used these resources in making our adequacy determination described below.

On November 22, 2010, EPA announced the availability of the revised Telluride $PM_{10}$ Maintenance Plan, and the $PM_{10}$ MVEB, on EPA's transportation conformity adequacy Web site. EPA solicited public comment on the MVEB, and the public comment period closed on December 22, 2010. We did not receive any comments. This information is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#telluride.*

By letter to the Colorado Department of Public Health and Environment (CDPHE) dated March 21, 2011, EPA found that the revised Telluride $PM_{10}$ Maintenance Plan and the 2021 $PM_{10}$ MVEB were adequate for transportation conformity purposes.[6] However, we noted in our letter that the revised Telluride $PM_{10}$ Maintenance Plan did not discuss the $PM_{10}$ MVEB for 2012 of 10,001 lbs/day from the original $PM_{10}$ maintenance plan that EPA approved in 2001 (see 66 FR 32556, June 15, 2001).

According to 40 CFR 93.118(e)(1), the EPA-approved 2012 $PM_{10}$ MVEB must continue to be used for analysis years 2012 through 2020 (as long as such years are within the timeframe of the transportation plan), unless the State elects to submit a SIP revision to revise the 2012 $PM_{10}$ MVEB and EPA approves the SIP revision. This is because the revised Telluride $PM_{10}$ Maintenance Plan did not revise the previously-approved 2012 $PM_{10}$ MVEB nor establish a new MVEB for 2012. Accordingly, the MVEB ''. . . for the most recent prior year . . .'' (i.e., 2012) from the original maintenance plan must continue to be used (see 40 CFR 93.118(b)(1)(ii) and (b)(2)(iv)).

We note that there is a considerable difference between the 2021 and 2012 budgets—1,108 lbs/day versus 10,001 lbs/day. This is largely an artifact of changes in the methods, models, and

[5] ''Companion Guidance for the July 1, 2004 Final Transportation Conformity Rule, Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards'' (EPA 420–B–04–012 July, 2004).

[6] In a **Federal Register** notice dated August 2, 2011, we notified the public of our finding (see 76 FR 46288). This adequacy determination became effective on August 17, 2011.

emission factors used to estimate mobile source emissions. The 2021 MVEB is consistent with the State's 2021 emissions inventory for vehicle exhaust and road dust, and, thus, is consistent with the State's maintenance demonstration for 2021.

The discrepancy between the 2012 and 2021 MVEBs is not a significant issue for several reasons. As a practical matter, the 2021 MVEB of 1,108 lbs/day of $PM_{10}$ would be controlling for any conformity determination involving the relevant years because conformity would have to be shown to both the 2012 MVEB and the 2021 MVEB. Also, for any maintenance plan, like the revised Telluride $PM_{10}$ Maintenance Plan, that only establishes a MVEB for the last year of the maintenance plan, 40 CFR 93.118(b)(2)(i) requires that the demonstration of consistency with the budget be accompanied by a qualitative finding that there are no factors that would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. Therefore, when a conformity determination is prepared which assesses conformity for the years before 2021, the 2021 MVEB and the underlying assumptions supporting it would have to be considered. Finally, 40 CFR 93.110 requires the use of the latest planning assumptions in conformity determinations. Thus, the most current motor vehicle and road dust emission factors would need to be used, and we expect the analysis would show greatly reduced $PM_{10}$ motor vehicle and road dust emissions from those calculated in the first maintenance plan. In view of the above, EPA is proposing to approve the 2021 $PM_{10}$ MVEB of 1,108 lbs/day.

## V. Proposed Action

We are proposing to approve the revised Telluride $PM_{10}$ Maintenance Plan that was submitted to us on March 31, 2010. We are proposing to approve the revised maintenance plan because it demonstrates maintenance through 2021 as required by CAA section 175A(b), retains the control measures from the initial $PM_{10}$ maintenance plan that EPA approved in June of 2001, and meets other CAA requirements for a section 175A maintenance plan. We are proposing to exclude from use in determining that Telluride continues to attain the 24-hour $PM_{10}$ NAAQS exceedances of the 24-hour $PM_{10}$ NAAQS that were recorded at the Telluride $PM_{10}$ monitor on April 5, 2010 and April 16, 2013 because they meet the criteria for exceptional events caused by high wind natural events. We are also proposing to approve the revised maintenance plan's 2021 transportation conformity MVEB for $PM_{10}$ of 1,108 lbs/day.

## VI. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. This proposed action merely proposes to approve state law as meeting Federal requirements and does not propose to 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 Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP would not be approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, $PM_{10}$, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 18, 2013.

**Howard M. Cantor,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2013–28652 Filed 11–27–13; 8:45 am]

BILLING CODE 6560–50–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R01–OAR–2012–0113; A–1–FRL–9903–20–Region 1]**

## Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Transportation Conformity and Conformity of General Federal Actions

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. In addition, the revision relies on the Federal rule for General Conformity. The intended effect of this action is to approve State criteria and procedures to govern conformity determinations. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before December 30, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2012–0113 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''EPA–R01–OAR–2012–0113,'' Anne Arnold, U.S.

Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109—3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109—3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1668, fax number (617) 918–0668, email *cooke.donald@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: November 8, 2013.

**Michael Kenyon,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. 2013–28530 Filed 11–27–13; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Part 412

**[CMS–1604–N]**

### Medicare Program; Town Hall Meeting on FY 2015 Applications for New Medical Services and Technology Add-On Payments

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a Town Hall meeting in accordance with the Social Security Act (the Act) to discuss fiscal year (FY) 2015 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this meeting to present their comments, recommendations, and data regarding whether the FY 2015 new medical services and technologies applications meet the substantial clinical improvement criterion.

**DATES:** *Meeting Date:* The Town Hall Meeting announced in this notice will be held on Wednesday, February 12, 2014. The Town Hall Meeting will begin at 9:00 a.m. Eastern Standard Time (e.s.t.) and check-in will begin at 8:30 a.m. e.s.t. *Deadline for Registration for Participants (not Presenting) at the Town Hall Meeting and Submitting Requests for Special Accommodations:* The deadline to register to attend the Town Hall Meeting and requests for special accommodations must be received no later than 5:00 p.m., e.s.t. on Tuesday, January 28, 2014.

*Deadline for Registration of Presenters of the Town Hall Meeting:* The deadline to register to present at the Town Hall Meeting must be received no later than 5:00 p.m., e.s.t. on Tuesday, January 21, 2014.

*Deadline for Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting:* Written comments and agenda items for discussion at the Town Hall Meeting, including agenda items by presenters, must be received by Tuesday, January 21, 2014. In addition to materials submitted for discussion at the Town Hall Meeting, individuals may submit other written comments after the Town Hall Meeting, as specified in the **ADDRESSES** section of this notice, on whether the service or technology represents a substantial clinical improvement. These comments must be received by Wednesday, March 5, 2014, for consideration in the FY 2015 IPPS proposed rule.

**ADDRESSES:** *Meeting Location:* The Town Hall Meeting will be held in the main Auditorium in the central building of the Centers for Medicare and Medicaid Services located at 7500 Security Boulevard, Baltimore, MD 21244–1850.

In addition, we are providing two alternatives to attending the meeting in person—(1) there will be an open toll-free phone line to call into the Town Hall Meeting; or (2) participants may view and participate in the Town Hall Meeting via live stream technology and/or webinar. Information on these options are discussed in section II.B. of this notice.

*Registration and Special Accommodations:* Individuals wishing to participate in the meeting must register by following the on-line registration instructions located in section III. of this notice or by contacting staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting:* Each presenter must submit an agenda item(s) regarding whether a FY 2015 application meets the substantial clinical improvement criterion. Agenda items, written comments, questions or other statements must not exceed three single-spaced typed pages and may be sent via email to *newtech@cms.hhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael Treitel, (410) 786–4552, *michael.treitel@cms.hhs.gov,* or Celeste Beauregard, (410) 786–8102, *celeste.beauregard@cms.hhs.gov* or Carol Schwartz, (410) 786–0576, *carol.schwartz@cms.hhs.gov.* Alternatively, you may forward your requests via email to *newtech@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background on the Add-On Payments for New Medical Services and Technologies under the IPPS

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) require the Secretary to establish a process of identifying and ensuring adequate payments to acute care hospitals for new medical services and technologies under Medicare. Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the hospital inpatient prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment). (See the fiscal year (FY) 2002 IPPS proposed rule (66 FR 22693, May 4, 2001) and final rule (66 FR 46912, September 7, 2001) for a more detailed discussion.)

In the September 7, 2001 final rule (66 FR 46914), we noted that we evaluated a request for special payment for a new medical service or technology against the following criteria in order to determine if the new technology meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.
- The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.
- Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

++ Reduced mortality rate with use of the device.

++ Reduced rate of device-related complications.

++ Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).

++ Decreased number of future hospitalizations or physician visits.

++ More rapid beneficial resolution of the disease process treatment because of the use of the device.

++ Decreased pain, bleeding or other quantifiable symptoms.

++ Reduced recovery time.

In addition, we indicated that the requester is required to submit evidence that the technology meets one or more of these criteria.

Section 503 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1886(d)(5)(K)(viii) of the Act to revise the process for evaluating new medical services and technology applications by requiring the Secretary to do the following:

- Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.
- Make public and periodically update a list of all the services and technologies for which an application is pending.
- Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.
- Provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS as to whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and alternatives provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2015. In addition, they will help us to evaluate our policy on the IPPS new technology add-on payment process before the publication of the FY 2015 IPPS proposed rule.

## II. Town Hall Meeting and Conference Calling/Live Streaming Information

### *A. Format of the Town Hall Meeting*

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial clinical improvement. This meeting will allow for a discussion of the substantial clinical improvement criteria on each of the FY 2015 new medical services and technology add-on payment applications. Information regarding the applications can be found on our Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.*

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Presenters will be scheduled to speak in the order in which they register and grouped by new technology applicant. Therefore, individuals who would like to present must register and submit their agenda item(s) via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

In addition, written comments will also be accepted and presented at the meeting if they are received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for our consideration. If the comments are to be considered before the publication of the proposed rule, the comments must be received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

### *B. Conference Call, Live Streaming, and Webinar Information*

For participants who cannot attend the Town Hall Meeting in person, an open toll-free phone line, (877) 267–1577, has been made available. The meeting number is ''999 396 992.''

Also, there will be an option to view and participate in the Town Hall Meeting via live streaming technology and/or a webinar. Information on the option to participate via live streaming technology and/or a webinar will be provided through an upcoming listserv notice and posted on the New Technology Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Continue to check the Web site for updates.

*Disclaimer:* We cannot guarantee reliability for live streaming technology and/or a webinar.

## III. Registration Instructions

The Division of Acute Care in CMS is coordinating the meeting registration for the Town Hall Meeting on substantial clinical improvement. While there is no registration fee, individuals planning to

attend the Town Hall Meeting in person must register to attend.

Registration may be completed on-line at the following web address: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Select the link at the bottom of the page ''Register to Attend the New Technology Town Hall Meeting''. After completing the registration, on-line registrants should print the confirmation page(s) and bring it with them to the meeting(s).

If you are unable to register on-line, you may register by sending an email to *newtech@cms.hhs.gov*. Please include your name, address, telephone number, email address and fax number. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

### IV. Security, Building, and Parking Guidelines

Because these meetings will be located on Federal property, for security reasons, any persons wishing to attend these meetings must register by the date specified in the **DATES** section of this notice. Please allow sufficient time to go through the security checkpoints. It is suggested that you arrive at 7500 Security Boulevard no later than 8:30 a.m. e.s.t. if you are attending the Town Hall Meeting in person so that you will be able to arrive promptly for the meeting.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

**Note:** Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting in person. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting(s).

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building. Seating capacity is limited to the first 250 registrants.

**Authority:** Section 503 of Pub. L. 108–173.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 5, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2013–28518 Filed 11–27–13; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 13–2105; MB Docket No. 13–250; RM–11705]**

## Radio Broadcasting Services; Tohatchi, New Mexico

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by the Navajo Nation to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by allotting FM Channel 268C2, Tohatchi, New Mexico, as a first local service under the Tribal Priority. A staff engineering analysis indicates that Channel 268C2 can be allotted to Tohatchi consistent with the minimum distance separation requirements of the Rules without the imposition of a site restriction. The reference coordinates are 35–54–37 NL and 108–46–26 WL.

**DATES:** Comments must be filed on or before December 23, 2013, and reply comments on or before January 7, 2014.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Lauren Lynch Flick, Esq., Pillsbury, Winthrop, Shaw, & Pittman LLP, 2300 N Street NW., Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 13–250, adopted October 31, 2013, and released November 1, 2013. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339.

### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Tohatchi, Channel 268C2.

[FR Doc. 2013–28549 Filed 11–27–13; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 582**

**[Docket No. NHTSA–2013–0078]**

## Insurance Cost Information Regulation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Request for comments.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is seeking comment on the most useful data, format and method for reporting simple and understandable motor vehicle damage susceptibility information to consumers. NHTSA plans to use this information to meet a requirement by Congress that it study and report its findings, including the possibility that no damage susceptibility data is useful to consumers or that no useful format or method exists for reporting damage susceptibility information to consumers.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them no later than January 28, 2014.

**ADDRESSES:** Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251
- *Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78). For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NVS–131, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, W43–443, Washington, DC 20590–0001, phone 202–366–4139.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Background
  A. Previous Rulemaking/Legislative History
  B. Public Law 112–252
  C. Insurance Cost Information Booklet
II. Comments Requested
III. Requests for Comments on Particular Issues
IV. Public Participation

### I. Background

#### *A. Previous Rulemaking/Legislative History*

In response to a growing concern about the large amount of money the American consumer was spending on maintenance of automobiles and repair of crash damage, the Motor Vehicle Information and Cost Savings (MVICS) Act, Public Law 92–513, was enacted on October 20, 1972. Among other provisions, the MVICS Act required the Secretary of Transportation to compile and provide the public with information that allowed comparison of damage susceptibility, crashworthiness, and the degree of difficulty of diagnosis and repair of damage to or failure of mechanical and electrical systems among makes and models of passenger motor vehicles.[1] This requirement is codified in 49 U.S.C. 32302.[2] Until early 2013, § 32302 also required that the Secretary of Transportation prescribe regulations requiring passenger motor vehicle dealers to distribute to prospective buyers information the Secretary develops and provides to the dealers that compares insurance costs for different makes and models of passenger motor vehicles based on damage susceptibility and crashworthiness.[3] The purpose of these requirements was to provide a means of reducing the costs of repairs and insurance by increasing public awareness of these characteristics and motivating manufacturers to build cars which are safe to operate, more damage resistant, less expensive to repair, and less costly to insure.

NHTSA implemented these requirements through several different programs. Information relating to vehicle crashworthiness and various types of crash avoidance systems are available through NHTSA's New Car Assessment Program (NCAP). NCAP provides vehicle safety information that enables consumers to compare the safety performance and features of new vehicles, helping them to make their new vehicle purchasing decisions and encouraging manufacturers to improve the safety aspects of existing vehicle designs and include new or better safety technologies in future vehicle designs. NCAP data (including frontal crash protection and other crash test data) is available online at *www.safercar.gov.*

In order to meet the specific requirements regarding insurance cost information, NHTSA established 49 CFR Part 582, Insurance Cost Information Regulation. This regulation required automobile dealers to make available and provide information comparing insurance rates for different makes and models of passenger motor vehicles based on their differences in damage susceptibility and crashworthiness to prospective purchasers where they offered new vehicles for sale. Failure to provide this information could result in civil penalties to the dealership.

Part 582 required new car dealers to make collision loss experience data available to prospective customers in a booklet, the Insurance Cost Information Booklet, prepared and annually provided by NHTSA from data compiled by the Highway Loss Data Institute (HLDI). The Insurance Cost Information Booklet provides information on comparative insurance costs, based on damage susceptibility and crashworthiness, for different makes and models of passenger cars, sport utility vehicles, light trucks, and vans. In the March 5, 1993 final rule establishing the requirements, NHTSA indicated that it would provide each dealer with a single copy of the booklet

[1] MVICS Act § 201(d) (codified as amended at 49 U.S.C. 32302(a)–(b)).

[2] Section 31305 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–114 (July 6, 2012) amended subsection (a) by adding language expanding the type of comparative vehicle information to be developed and provided to the public to include crash avoidance and any other areas the Secretary determines will improve the safety of passenger motor vehicles.

[3] MVICS Act § 201(e) (formerly codified at 49 U.S.C. 32302(c)).

and give new car dealerships the responsibility of reproducing a sufficient number of copies for retention by their prospective purchasers.[4]

*B. Public Law 112–252*

Public Law 112–252, passed by Congress and signed by the President on January 10, 2013, repeals the statutory provision mandating the requirement for passenger motor vehicle dealers to distribute this information to prospective buyers. The House of Representatives Committee on Energy and Commerce Report on the bill that became Public Law 112–252 [5] identified the requirement as obsolete. The Committee noted that consumers rarely requested the information, civil penalties were imposed on dealerships if booklets were not available, and the insurance cost data in the booklet was general and questionable.

NHTSA has notified new vehicle dealers that, because of the repeal of subsection (c) of § 32302 of title 49, U.S.C., passenger motor vehicle dealers are no longer required to make the Insurance Cost Information Booklet available, or to reproduce a sufficient number of copies for retention for their prospective purchasers. As a practical matter, NHTSA does not have funding available to publish and distribute multiple copies of the Insurance Cost Information Booklet to the more than 2,700 new vehicle dealers in the U.S.

Although Public Law 112–252 repealed the provision mandating that dealers distribute certain information, the law did not amend the Secretary's discretionary authority to require dealers to distribute damage susceptibility information to purchasers.[6] However, the law amended 49 U.S.C. 32302(b) by adding that ''(t)he Secretary, after providing an opportunity for public comment, shall study and report to Congress the most useful data, format, and method for providing simple and understandable information to consumers. Congress has directed the agency to carry out this requirement no later than the date that is 2 years after the date of the enactment.'' [7]

Thus, the agency seeks information to address Congress's amendment to § 32302(b) on the most useful, if any, alternative data, format, and method for providing simple and understandable damage susceptibility information to consumers. The agency is also seeking this information to assist us in determining whether to continue publishing the annual Insurance Cost Information Booklet and, if so, what types of enhancements can be made to ensure the continued availability of the insurance cost information to prospective vehicle purchasers. The agency is interested in determining if revisions to its current information and process would be necessary or could be improved. At this time, NHTSA welcomes written comments from the public on the issues discussed in this request for comments or on any other topic within the scope of this request.

*C. Insurance Cost Information Booklet*

The data in the Insurance Cost Information Booklet contains the best available information known to the agency on the effect of damage susceptibility on insurance premiums. The data for NHTSA's annual booklet was taken from information compiled by HLDI. The agency's most recent publication of the Insurance Cost Information Booklet (February 2013, DOT HS 811 738) uses data from HLDI's December 2012 *Insurance Collision Report.* It reflects the collision loss experience of passenger cars, utility vehicles, light trucks, and vans sold in the United States in terms of the average loss payment per insured vehicle year for model years 2010–2012. The data presented vehicle collision loss experience in relative terms, with a rating of 100 representing the average for all passenger vehicles. For example, a rating of 122 reflects a collision loss experience that is 22 percent higher (worse) than average, while a rating of 96 reflects a collision loss experience that is 4 percent lower (better) than average. The data is not relevant for models that have been substantially redesigned for 2012, and it does not include information about models with insufficient claim experience. Additionally, different insurance companies often charge different premiums for the same driver and vehicle. Therefore, purchasers are advised to contact insurance company agents directly to determine the actual premium that they will be charged for insuring a particular vehicle. The Insurance Cost Information Booklet is annually made available to consumers through the agency's Web site at *www.nhtsa.gov/theft,* under the ''Additional Resources'' heading.

## II. Comments Requested

The agency is seeking public input regarding possible approaches it may take to provide information regarding damage susceptibility for makes and models of passenger cars, sport utility vehicles, light trucks, and vans.

The agency welcomes comments on areas of relevance that are not listed in this notice, but are areas that commenters believe the agency should consider on the most useful data, format, and method for providing simple and understandable damage susceptibility information to consumers. NHTSA will consider all comments received. After we receive comments, we will address all areas listed in this notice, plus any new areas that were provided by public comments. We will then use this information to develop a Report to Congress due January 10, 2015.

## III. Request for Comments on Particular Issues

This notice discusses the various subject areas for which NHTSA is seeking comments and information with respect to their future potential as an enhancement to providing alternative types of damage susceptibility and insurance cost information. Some of the areas, if pursued, may require time and additional work by the agency. NHTSA seeks information and public comment about each area.

a. Provide any comments on consumer experiences with the usefulness, reliability and availability of insurance cost information based on damage susceptibility for motor vehicles.

b. Have there been any instances that can be provided to support whether consumers have requested information on the damage susceptibility of vehicles when they have visited dealerships?

c. Have there been any instances that can be provided to support whether consumers have seen, requested or were provided a copy of the Insurance Cost Information Booklet when they have visited dealerships?

d. What suggestions do you have to increase public awareness of damage susceptibility and insurance cost information?

e. What suggestions would you make to improve the availability of damage susceptibility and insurance cost information to new car purchasers?

f. Provide any comments or information on consumer usage of the Insurance Cost Information booklet as a reference tool for purchasing a vehicle.

g. Is the information helpful/useful and why?

h. What changes could be suggested to make the Insurance Cost Information Booklet more useful, informative, simple and understandable to consumers?

[4] 58 FR 12545.

[5] H.R. Rep. No. 112–591 (2012).

[6] 49 U.S.C. 32302(b).

[7] Report to Congress is due 2 years after date of enactment on January 10, 2015.

i. Are there any reliable real-world data or studies available on damage susceptibility and collision loss characteristics of passenger vehicles? Please provide applicable data and source, or other information you believe would be helpful to the agency in determining the best possible information/data available.

j. Are real-world data or studies available relevant to insurance premium differences? Please provide applicable data and source or other information you believe would be helpful to the agency in determining the best possible information/data.

k. What would be the impact of not providing the damage susceptibility and insurance cost information to prospective purchasers of new vehicles?

l. Does the current information provided in the agency's Insurance Cost Information Booklet address the needs of consumers? If so, how? If not, what could the agency do to enhance the information to meet the needs of consumers?

m. Are there any agencies or organizations that would find it useful to provide the damage susceptibility and insurance cost information to its consumers, customers or clients and if so, why?

n. Is the current format for the Insurance Cost Information Booklet simple and understandable? Would you recommend changing the format? If so, how would you recommend it be changed?

o. What would be the best method for distributing this information to consumers?

p. What would be the best way to convey information to consumers about the likelihood of a vehicle being damaged in an accident?

q. Are there any organizations or state agencies that collect the information identified in this notice that NHTSA should be aware of? If so, how do these entities use and/or publish this information?

## IV. Public Participation

*How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Office of the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you may submit a copy (two copies if submitting by mail or hand delivery), from which you have deleted the claimed confidential business information, to the docket by one of the methods given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR Part 512).

*Will the agency consider late comments?*

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments received after that date.

You may read the comments received at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the docket for new material.

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 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

**Authority:** 49 U.S.C. 32302, delegation of authority at 49 CFR 1.95.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2013–28590 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–59–P**

# Notices

Federal Register

Vol. 78, No. 230

Friday, November 29, 2013

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

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Farm Service Agency

### Notice of Intent To Prepare a Supplemental Programmatic Environmental Impact Statement for the Conservation Reserve Program

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Notice of Intent (NOI); request for comments.

**SUMMARY:** This notice announces that the Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), intends to complete a Supplemental Programmatic Environmental Impact Statement (SPEIS) assessing the environmental impacts of potential changes to the Conservation Reserve Program (CRP), as required by the National Environmental Policy Act of 1969 (NEPA). The intent of this notice is to provide an initial summary introduction to the alternatives being considered for potential changes to CRP, and to request comments on these proposed alternatives. The input we receive as a result of this notice will enable us to refine the alternatives, begin to evaluate their impacts, and document results in the scoping report as required by NEPA.

**DATES:** We will consider comments that we receive by January 13, 2014. Comments received after this date will be considered to the extent possible.

**ADDRESSES:** We invite you to submit comments on this NOI. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments;
- *Online:* Go to *www.CRPSPEIS.com.* Follow the online instructions for submitting comments;
- *Email: CRPcomments@cardnotec.com.*
- *Fax:* (757) 594–1469.
- *Mail, Hand Delivery, or Courier:* CRP SPEIS, c/o Cardno TEC, Inc., 11817 Canon Blvd., Suite 300, Newport News, VA 23606.

All written comments will be available for inspection online at www.regulations.gov and in the Office of the Director, Conservation and Environmental Programs Division, FSA, USDA, 1400 Independence Ave. SW., Room 4709 South Building, Washington, DC 20250, during business hours between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this notice is available through the FSA home page at *http://www.fsa.usda.gov/.*

**FOR FURTHER INFORMATION CONTACT:** For questions, contact Nell Fuller, National Environmental Compliance Manager, telephone: (202) 720–6303. For the documents discussed in this notice, go to *www.CRPSPEIS.com.*Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:** As required by NEPA regulations (40 CFR 1500–1508), FSA is assessing potential changes to CRP in 2014 by preparing a SPEIS (2014 CRP SPEIS), to provide FSA decisionmakers, other agencies, Tribes, and the public with an analysis that evaluates program effects in appropriate contexts, describes the intensity of adverse as well as beneficial impacts, and addresses cumulative environmental impacts associated with proposed programmatic changes to CRP. CRP was first authorized in the Food Security Act of 1985, Public Law 99–198, 99 Stat. 1509–1514 (16 U.S.C. 3831–3836), and is governed by regulations in 7 CFR part 1410. CRP is a voluntary program that supports the implementation of long-term conservation measures designed to improve the quality of ground and surface waters, control soil erosion, and enhance wildlife habitat on environmentally sensitive agricultural land. In return, CCC provides participants with rental payments and cost share assistance under contracts that extend from 10 to 15 years. CRP is a CCC program administered by FSA with the support of other Federal, State, and local agencies and organizations. More information on CRP is available at *http://www.fsa.usda.gov/FSAwebapp?area=home&/subject=copr&/topic=crp.*

Over the last decade, FSA has completed extensive NEPA analysis pertaining to CRP and components of the program. The 2014 CRP SPEIS will tier to (that is, it will focus on analyzing the new changes and incorporate and augment the prior analyses) and incorporate by reference other applicable NEPA documentation, as appropriate, and supplement the 2010 CRP SEIS. As such, only those proposed changes to CRP that have not been adequately addressed in other NEPA documentation will be addressed in the 2014 CRP SPEIS. Other applicable NEPA documentation can be found at *www.CRPSPEIS.com* and includes:

- The 2003 CRP Environmental Impact Statement (EIS) and resulting Record of Decision (ROD), which evaluated the environmental consequences of changes to CRP under the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (which is commonly known as the 2002 Farm Bill).
- The 2008 13 state-level CRP Environmental Assessments (EAs) and resulting Findings of No Significant Impacts (FONSI), which analyzed the environmental impacts of managed haying and grazing variations on CRP contracts.
- The 2008 CRP Programmatic EA (PEA) and FONSI, which evaluated mandatory changes to CRP reauthorized by the Food, Conservation, and Energy Act of 2008, Public Law 10–246 (2008 Farm Bill).
- The 2010 CRP SEIS and ROD, which evaluated changes to CRP enacted by the 2008 Farm Bill and supplemented the 2003 CRP EIS.
- The 2012 CRP PEA and FONSI, which evaluated the environmental consequences associated with authorizing emergency haying and grazing of CRP conservation practices (CPs) that had previously been ineligible, and helped alleviate local impacts to farmers and ranchers as a result of extreme drought and high temperatures during 2012.

Building on that NEPA documentation, the 2014 CRP SPEIS

will help FSA review potential alternatives to, and environmental impacts expected to result from, proposed changes to CRP. The results of the 2014 CRP SPEIS and subsequent ROD will be used in implementing and modifying CRP administration and will also serve as guidance to FSA decision-makers when considering proposed CRP changes.

The SPEIS process provides a means for the public, other agencies, and Tribes to provide input on program implementation alternatives and their impacts, and other environmental concerns. We encourage you to participate in helping to define the scope of the draft 2014 CRP SPEIS.

**Summary Description of Preliminary Alternatives**

To initiate the process, FSA has developed a set of preliminary alternatives to be studied and impacts to be analyzed in the draft 2014 CRP SPEIS. At this time, FSA is proposing three alternatives (the No Action alternative and two action alternatives). The No Action alternative (continuation of CRP as it is currently administered and analyzed in the 2010 CRP SEIS) will be evaluated as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508).

FSA expects legislative changes to CRP in the next Farm Bill (or other relevant legislation). Although the timing of the next legislative change to CRP is uncertain, to be able to implement the changes expeditiously, FSA is getting a start on the analysis of potential changes by including potential legislative changes in the alternatives. As a starting point for the required NEPA analysis that will be required before FSA can implement regulatory changes when the Farm Bill is enacted, FSA determined that using the proposals most recently passed by the House and the Senate, respectively, was reasonable. Because those proposals may change, it did not seem prudent to detail those proposed changes in this notice; the alternatives will be revised as needed in response to legislation and public and other input. To see the details that FSA is working from, refer to *www.CRPSPEIS.com* for the text of the House and Senate proposals used as our starting point. At this point, the two separate CRP proposals, however they are eventually modified, will be the foundation for our proposed federal actions, and are therefore included as separate alternatives. They are similar, but have some differences, and as discussed below, are not the sole components of the action alternatives.

When the next Farm Bill is enacted (or any other legislative change to CRP), the resulting legislative changes to CRP will be used along with the public and other input to this NOI to fully articulate the alternatives and their impacts, which will be fully described in the resulting scoping report.

FSA has developed the two action alternatives that include the provisions from each of the respective proposed legislative changes to CRP, as well as the following discretionary considerations, to ensure that the 2014 CRP SPEIS captures the full range of potential alternatives, impacts, and issues anticipated: Administrative, staffing, and budgetary considerations; efficiency and jurisdiction concerns; and other factors. The alternatives and impacts will be amended, as appropriate, based on input from the public, other agencies, and Tribes during the scoping process, as well as by any legislative changes to CRP.

Both of the two action alternatives include a gradual reduction of the CRP enrollment cap by 20 to 25 percent over the next 5 years. In the 2014 CRP SPEIS, FSA will analyze discretionary measures to meet the proposed mandatory reduction in enrollment while maintaining the maximum environmental benefit realized from the program.

Other discretionary provisions, which FSA identified separately from any pending legislative changes, to be addressed in the 2014 CRP SPEIS include:

- Changing the enrollment cap on the Farmable Wetlands Program;
- Reducing incentive and cost-share payments for tree thinning activities;
- Evaluating other forms or processes for enrollment under continuous sign-up;
- Adding flexibility for haying and grazing, including emergency haying and grazing on otherwise ineligible CRP CPs (as addressed in the 2012 CRP PEA and FONSI); and
- Providing transition options for expiring contracts to enroll in other conservation programs.

Signed on November 21, 2013.

**Candace Thompson,**

*Acting Executive Vice President, Commodity Credit Corporation, and Acting Administrator, Farm Service Agency.*

[FR Doc. 2013–28520 Filed 11–27–13; 8:45 am]

BILLING CODE 3410–05–P

## CIVIL RIGHTS COMMISSION

### Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New York Advisory Committee to the Commission will convene at 12 p.m. (EST) on December 12, 2013. The purpose of the meeting is project planning to discuss the scope of the Advisory Committee's project on disparate treatment of youth in the New York correctional system.

These meetings will be conducted via conference call. Members of the public, including persons with hearing impairments, who wish to listen to the conference call should contact the Eastern Regional Office (ERO), ten days in advance of the scheduled meeting, so that a sufficient number of lines may be reserved. You may contact the Eastern Regional Office by phone at 202–376–7533—persons with hearing impairments would first call the Federal Relay Service at 1–800–977–8339 and give them the ERO number 202–376–7533—or by email at *ero@usccr.gov.* Those contacting ERO will be given instructions on how to listen to the conference call.

Members of the public who call-in can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by January 14, 2014. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

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

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

**David Mussatt,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2013–28639 Filed 11–27–13; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Social Values of Ecosystem Services (SolVES) in Marine Protected Areas for Management Decision-Making.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (request for a new information collection).

*Number of Respondents:* 1,415.

*Average Hours per Response:* 20 minutes.

*Burden Hours:* 472.

*Needs and Uses:* This request is for a new information collection.

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.,* authorizes the Secretary of Commerce to (1) preserve, protect, develop, and where possible, to restore or enhance, the resource of the Nation's coastal zone for this and succeeding generations, and

(2) encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States. Additionally, the National Marine Sanctuary Act (NMSA), 16 U.S.C. 1431 *et seq.,* authorizes the Secretary of Commerce to (1) maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, population and ecological processes; (2) enhance public awareness, understanding, and appreciation, and wise and sustainable use of the marine environment; and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System; and (3) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas.

The National Ocean Service (NOS) proposes to collect socio-economic data from residents of local counties and stakeholder groups using the Mission-Aransas NERR and the Olympic Coast NMS for recreational, cultural and other reasons. Up-to-date socio-economic data is needed to support the individual NERR and NMS site's conservation and management goals, to strengthen and improve resource management decision-making, to increase capacity, and to extend education and outreach efforts.

*Affected Public:* Individuals or households.

*Frequency:* Annually (each respondent, one time only).

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer: OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: November 22, 2013

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013–28567 Filed 11–27–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–008]**

### Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011–2012

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

**SUMMARY:** On June 7, 2013, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan for the period of review (POR) May 1, 2011, through April 30, 2012.[1] For these final results, we find that subject merchandise has been sold at less than normal value.

**DATES:** Effective November 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** Steve Bezirganian or Robert James, 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) 482–1131 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 7, 2013, the Department published the *Preliminary Results* of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan.[2]

On July 22, 2013, we received a case brief from the petitioner, United States Steel Corporation. On July 29, 2013, we received a rebuttal brief from the respondent, Shin Yang Steel Co., Ltd. (Shin Yang).

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[3] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. The revised deadline for the final results of this review is now November 22, 2013.

### Scope of the Order

The merchandise subject to the *Order*[4] is certain circular welded carbon steel pipes and tubes. For a full description of the scope of the *Order,* see the Issues and Decision Memorandum,[5] which is hereby

[1] *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 34335 (June 7, 2013) (*Preliminary Results*).

[2] *Id.*

[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[4] *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984) (*Order*).

[5] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and

Continued

adopted by this notice. The written description is dispositive.

**Analysis of Comments Received**

The comments received in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised and to which we have responded in the Issues and Decision Memorandum is 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 (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaacess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

**Changes from the Preliminary Results**

Based on our analysis of the comments received from interested parties, we have changed our calculation methodology for Shin Yang to remove an offset to costs that is associated with non-subject merchandise.[6]

**Final Results of the Review**

As a result of this review, we determine that the following weighted-average dumping margin exists for the period May 1, 2011, through April 30, 2012:

| Manufacturer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| Shin Yang Steel Co., Ltd. ..... | 8.91 |

Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled ''Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; 2011–2012,'' (Issues and Decision Memorandum) dated concurrently with this notice.

[6] *See* the Issues and Decision Memorandum; *see also* the company-specific calculation memorandum dated concurrently with this notice, entitled ''Analysis Memorandum for Shin Yang Steel Co., Ltd. for the Final Results of the Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; 2011–2012,'' and the cost memorandum dated concurrently with this notice, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Shin Yang Steel Co., Ltd.''

**Disclosure**

We will disclose the calculations performed for these final results to interested parties within five days after the date of the publication of this notice pursuant to 19 CFR 351.224(b).

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Because Shin Yang's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), the Department has calculated importer-specific assessment rates. Shin Yang did not report the name of the importer of record or the entered value for its sales to the United States during the POR because the identities of the importers were not known to Shin Yang. Accordingly, we calculated importer-specific per-unit duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each customer and dividing each of these amounts by the total quantity (*i.e.,* weight) associated with those sales. To determine whether these importer-specific per-unit assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the total amount of dumping calculated for the examined sales of each customer divided by estimated entered values for sales to the customer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties all entries for which the aforementioned importer-specific *ad valorem* rate is zero or *de minimis;* otherwise, we will instruct CBP to liquidate the appropriate entries at the aforementioned importer-specific per-unit assessment rates.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by Shin Yang or Yieh Phui for which these companies did not know were 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. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

**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 subject merchandise entered or withdrawn from warehouse, for consumption, on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Shin Yang will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters (now including Yieh Phui) will continue to be 9.70 percent, the all-others rate referenced in the *Order.* 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.

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 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.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: November 22, 2013.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

### List of Issues Discussed in the Issues and Decision Memorandum

Issue 1: Reported Cost Offset Involving Non-Subject Merchandise

Issue 2: Reported Cost Offset Involving Prepayment of Facilities

[FR Doc. 2013–28693 Filed 11–27–13; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–855]**

### Steel Threaded Rod from India: Postponement of Preliminary Determination of Antidumping Duty Investigation

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

**DATES:** November 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz or Raquel Silva, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4474, or (202) 482–6475, respectively.

**SUPPLEMENTARY INFORMATION:**

### Postponement of Preliminary Determination

On July 24, 2013, the Department of Commerce (the ''Department'') published a notice of initiation of the antidumping duty investigation of steel threaded rod from India.[1] The notice of initiation stated that the Department, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.205(b)(1), would issue its preliminary determination for this investigation, unless postponed, no later than 140 days after the date of the initiation. In addition, the Department tolled deadlines by 16 days due to the shutdown of the Federal Government.[2] Thus, the preliminary determination of this antidumping duty investigation is currently due no later than December 20, 2013.

On November 12, 2013, more than 25-days before the scheduled preliminary determination, All America Threaded Products Inc., Bay Standard Manufacturing Inc., and Vulcan Threaded Products Inc. (''Petitioners''), pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), made a timely request for a 50-day postponement of the preliminary determination in this investigation.[3] Petitioners noted in their request that they require additional time to analyze and comment upon the questionnaire responses of the mandatory respondents in this investigation.

The Department has found no compelling reason to deny the request and, therefore, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination to no later than 206 days after the date on which it initiated this investigation (the original 140-day period plus a 50 day extension and the 16 days tolled for the shutdown of the Federal Government). Therefore, the new deadline for issuing the preliminary determination is February 10, 2014.[4]

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 20, 2013.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2013–28554 Filed 11–27–13; 8:45 am]

BILLING CODE 3510–DS–P

---

[1] *See Steel Threaded Rod From India and Thailand: Initiation of Antidumping Duty Investigations,* 78 FR 44526 (July 24, 2013).

[2] *See* the memorandum for the record, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated October 18, 2013.

[3] *See* Letter from Petitioners to the Secretary of Commerce, ''Antidumping Duty Investigation of Steel Threaded Rod from India—Petitioners' Request for Extension of Time for Preliminary Determination,'' dated November 12, 2013.

[4] The extended deadline, calculated as 190 days from July 24, 2013 (the date of publication of the initiation notice of this investigation) plus the 16 days tolled for the shutdown of the Federal Government, falls on February 8, 2014, a Saturday, which is not a business day. Therefore, the extended deadline is the next business day, which is Monday, February 10, 2014. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended.* 70 FR 24533 (May 10, 2008).

---

## DEPARTMENT OF COMMERCE

### Office of Business Liaison

### Secretarial Infrastructure Business Development Mission to Mexico

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

**ACTION:** Amendment.

**SUMMARY:** The United States Department of Commerce, Office of the Secretary, Office of Business Liaison, is amending the Notice published at 78 FR 48855, August 12, 2013, regarding the Secretarial Infrastructure Business Development Mission to Mexico originally scheduled for November 18–22, 2013, has been rescheduled for February 3–7, 2014.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Andberg, Office of Business Liaison, Department of Commerce, Phone: 202–482–1360; Fax: 202–482–9000, Email: *businessliaison@doc.gov*.

**Elnora Moye,**

*Trade Program Assistant.*

[FR Doc. 2013–28579 Filed 11–27–13; 8:45 am]

BILLING CODE 3510–FP–P

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD006**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a 3-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Monday, December 16 through Wednesday, December 18, 2013. The meeting will begin at 10 a.m. on Monday, December 16th and at 8:30 a.m. on Tuesday, December 17th and Wednesday, December 18th.

**ADDRESSES:** The meeting will be held at the DoubleTree by Hilton Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500 or online at *doubletree3.hilton.com/en/hotels/massachusetts/doubletree-by-hilton-hotel-boston-north-shore-BOSNSDT/index.html*.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council, (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Monday, December 16, 2013**

The Council will begin the first day of this meeting with introductions by the Chairman, followed by an open public comment period during which any interested party may provide brief remarks on issues relevant to Council business but not listed on the meeting agenda. The Council will then discuss and approve NEFMC management priorities for 2014. The herring fishery management priorities approved at the November 2013 Council meeting will not be addressed at the December meeting. After a lunch break, the Scientific and Statistical Committee (SSC) will report an on overfishing limit and acceptable biological catch recommendations for sea scallops for fishing years 2014–15. The report also will include the SSC's review of an OFL and ABC for Gulf of Maine haddock for fishing years 2013–15. The Scallop Committee will update the Council about several modified alternatives in Framework Adjustment 25 to the Sea Scallop Fishery Management Plan (FMP). Before adjournment for the day a Northeast Fisheries Science Center representative will provide an overview of the National Standard 2 final rule.

**Tuesday, December 17, 2013**

The NEFMC's Groundfish Oversight Committee will present final measures to be approved at this meeting for inclusion in Framework Adjustment 51 to the Northeast Multispecies (Groundfish) FMP. These will address but are not limited to the 2014–16 overfishing level (OFL), acceptable biological catch (ABC) and annual catch level (ACL) for white hake, the 2014–15 OFL, ABC and ACL for Georges Bank yellowtail flounder, ACLs for Eastern Georges Bank haddock and Eastern Georges Bank cod, revisions to the Gulf of Maine cod and American plaice rebuilding plans, and small-mesh accountability measures (AMs) for the Georges Bank yellowtail flounder sub-ACL. Other provisions will address in-season adjustments to the U.S./Canada quotas, including the distribution of the haddock quota in the Eastern and Western U.S./Canada areas. The Council also will consider a prohibition on yellowtail flounder by limited access scallop fishery vessels, and possibly other adjustments to the groundfish management measures. Issues related to this fishery will be addressed until adjournment at the end of the afternoon on Tuesday.

**Wednesday, December 18, 2013**

During the final day of the Council meeting, members will review the Habitat Omnibus Amendment 2 Draft Environmental Impact Statement and identify preferred alternatives. The day will end with consideration of any other outstanding business that may have been deferred until the end of the meeting.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that 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.

Dated: November 25, 2013.

**Tracey L. Thompson,**

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

[FR Doc. 2013–28707 Filed 11–27–13; 8:45 am]

**BILLING CODE 3510–22–P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC762**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Wharf Recapitalization Project

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, two species of marine mammals during construction activities associated with a wharf recapitalization project at Naval Station Mayport, Florida.

**DATES:** This authorization is effective from December 1, 2013, through November 30, 2014.

**ADDRESSES:** A copy of the Navy's application and any supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* In the case of problems accessing these documents, please call the contact listed below. A memorandum describing our adoption of the Navy's Environmental Assessment (2013) and our associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act, are also available at the same site.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the

prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than 1 year, pursuant to requirements and conditions contained within an Incidental Harassment Authorization. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' The former is termed Level A harassment and the latter is termed Level B harassment.

**Summary of Request**

On April 4, 2013, we received a request from the Navy for authorization of the taking, by Level B harassment only, of marine mammals incidental to pile driving in association with the Wharf C–2 recapitalization project at Naval Station Mayport, Florida (NSM). That request was modified on May 9 and June 5, 2013, and a final version, which we deemed adequate and complete, was submitted on August 7, 2013. In-water work associated with the project is expected to be completed within the one-year timeframe of the IHA (December 1, 2013 through November 30, 2014). Two species of marine mammal are expected to be affected by the specified activities: bottlenose dolphin (*Tursiops truncatus truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*). These species may occur year-round in the action area.

Wharf C–2 is a single level, general purpose berthing wharf constructed in 1960. The wharf is one of NSM's two primary deep-draft berths and is one of the primary ordnance handling wharfs. The wharf is a diaphragm steel sheet pile cell structure with a concrete apron, partial concrete encasement of the piling and an asphalt paved deck. The wharf is currently in poor condition due to advanced deterioration of the steel sheeting and lack of corrosion protection, and this structural deterioration has resulted in the institution of load restrictions within 60 ft of the wharf face. The purpose of this project is to complete necessary repairs to Wharf C–2. Please refer to Appendix A of the Navy's application for photos of existing damage and deterioration at the wharf, and to Appendix B for a contractor schematic of the project plan.

Effects to marine mammals from the specified activity are expected to result from underwater sound produced by vibratory and impact pile driving. In order to assess project impacts, the Navy used thresholds recommended by NMFS, outlined later in this document. The Navy assumed practical spreading loss and used empirically-measured source levels from representative pile driving events to estimate potential marine mammal exposures. Predicted exposures are described later in this document. The calculations predict that only Level B harassment would occur associated with pile driving activities, and required mitigation measures further ensure that no more than Level B harassment would occur.

**Description of the Specified Activity**

Additional details regarding the specified activity were described in our **Federal Register** notice of proposed authorization (78 FR 52148; August 22, 2013; hereafter, the FR notice); please see that document or the Navy's application for more information.

*Specific Geographic Region and Duration*

NSM is located in northeastern Florida, at the mouth of the St. Johns River and adjacent to the Atlantic Ocean (see Figure 2–1 of the Navy's application). The specific action area consists of the NSM turning basin, an area of approximately 2,000 by 3,000 ft containing ship berthing facilities at sixteen locations along wharves around the basin perimeter. The turning basin, connected to the St. Johns River by a 500-ft-wide entrance channel, will largely contain sound produced by project activities, with the exception of sound propagating east into nearshore Atlantic waters through the entrance channel (see Figure 2–2 of the Navy's application). Wharf C–2 is located in the northeastern corner of the Mayport turning basin.

The project is expected to require a maximum of 50 days of in-water vibratory pile driving work over a 12-month period. It is not expected that significant impact pile driving would be necessary, on the basis of expected subsurface driving conditions and past experience driving piles in the same location. However, twenty additional days of impact pile driving are included in the specified activity as a contingency, for a total of 70 days in-water pile driving considered over the 12-month timeframe of the proposed IHA.

*Description of Specified Activity*

In order to rehabilitate Wharf C–2, the Navy proposes to install a new steel king pile/sheet pile (SSP) bulkhead. An SSP system consists of large vertical king piles with paired steel sheet piles driven inbetween and connected to the ends of the king piles. Please see Figures 1–1 through 1–4 and Table 1–1 in the Navy's application for project schematics, descriptive photographs, and further information about the pile types to be used.

The project will require installation of approximately 120 single sheet piles and 119 king piles (all steel) to support the bulkhead wall, and fifty polymeric (plastic) fender piles. Vibratory installation of the steel piles will require approximately 45 days, with approximately 5 additional days needed for vibratory installation of the plastic piles. King piles are long I-shaped guide piles that provide the structural support for the bulkhead wall. Sheet piles, which form the actual wall, will be driven in pairs between the king piles. Once piles are in position, it is expected that less than 60 seconds of vibratory driving would be required per pile to reach the required depth. Time interval between driving of each pile pair will vary, but is expected to be a minimum of several minutes due to time required for positioning, etc. One template consists of the combination of five king piles and four sheet pile pairs; it is expected that three such templates may be driven per day. Polymeric fender piles will be installed after completion of the bulkhead, at an expected rate of approximately ten piles per day.

Impact pile driving is not expected to be required for most piles, but may be used as a contingency in cases when vibratory driving is not sufficient to reach the necessary depth. A similar project completed at an adjacent wharf required impact pile driving on only seven piles (over the course of two days). Impact pile driving, if it were required, could occur on the same day as vibratory pile driving, but driving rigs would not be operated simultaneously.

*Description of Sound Sources and Distances to Thresholds*

An in-depth description of sound sources in general was provided in the FR notice (78 FR 52148; August 22, 2013). Significant sound-producing in-water construction activities associated with the project include vibratory pile driving and potentially impact pile driving.

*Sound Thresholds*

NMFS currently uses acoustic exposure thresholds as important tools to help better characterize and quantify the effects of human-induced noise on marine mammals. These thresholds have predominantly been presented in the form of single received levels for particular source categories (e.g., impulse, continuous, or explosive) above which an exposed animal would be predicted to incur auditory injury or be behaviorally harassed. Current NMFS practice (in relation to the MMPA) regarding exposure of marine mammals to sound is that cetaceans and pinnipeds exposed to sound levels of 180 and 190 dB rms or above, respectively, are considered to have been taken by Level A (i.e., injurious) harassment, while behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 120 dB rms for continuous sound (such as will be produced by vibratory pile driving) and 160 dB rms for pulsed sound (produced by impact pile driving), but below injurious thresholds. NMFS uses these levels as guidelines to estimate when harassment may occur.

NMFS is in the process of revising these acoustic thresholds, with the first step being to identify new auditory injury criteria for all source types and new behavioral criteria for seismic activities (primarily airgun-type sources). For more information on that process, please visit *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

*Distance to Sound Thresholds*

Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Please see the FR notice (78 FR 52148; August 22, 2013) for a detailed description of the calculations and information used to estimate distances to relevant threshold levels. In general, the sound pressure level (SPL) at some distance away from the source (e.g., driven pile) is governed by a measured source level, minus the transmission loss of the energy as it dissipates with distance. A practical spreading value of 15 (4.5 dB reduction in sound level for each doubling of distance) is often used under intermediate conditions, and is assumed here.

Source level, or the intensity of pile driving sound, is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. However, these data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles. We know of no existing measurements for the specific pile types planned for use at NSM (i.e., king piles, paired sheet piles, plastic pipe piles), although some data exist for single sheet piles. It was therefore necessary to extrapolate from available data to determine reasonable source levels for this project.

Representative data for pile driving SPLs recorded from similar construction activities in recent years, as well as additional assumptions made in determining appropriate proxy values, were presented in the FR notice (78 FR 52148; August 22, 2013). Underwater sound levels from pile driving for this project are assumed to be as follows:

- For vibratory driving of steel sheet and king piles, 178 dB re 1 μPa (rms). This proxy value was the highest representative value for vibratory driving of steel sheet piles and appropriately-sized steel pipe piles found in the California Department of Transportation's compendium of pile driving data (Caltrans, 2012).
- For impact driving of steel sheet and king piles, 204 dB re 1 μPa (rms). This proxy value was deemed to be the most representative value for impact driving of appropriately-sized steel pipe piles, as found in the California Department of Transportation's compendium of pile driving data.
- For vibratory driving of polymeric piles 168 dB re 1 μPa (rms). This proxy value, measured by the Washington State Department of Transportation for vibratory removal of timber piles, was determined to be the only reasonable approximation of these pile types (Laughlin, 2011).

Please see Tables 6–3 and 6–4 in the Navy's application. All calculated distances to and the total area encompassed by the marine mammal sound thresholds are provided in Table 1.

TABLE 1—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

| Pile type | Method | Threshold | Distance (m)[1] | Area (sq. km)[2] |
|---|---|---|---|---|
| Steel (sheet and king piles) | Vibratory | Level A harassment (180 dB) | n/a | 0 |
| | | Level B harassment (120 dB) | 7,356 | 2.9 |
| | Impact | Level A harassment (180 dB) | 40 | 0.004 |
| | | Level B harassment (160 dB) | 858 | 0.67 |
| Polymeric (plastic fender piles) | Vibratory | Level A harassment (180 dB) | n/a | 0 |
| | | Level B harassment (120 dB) | 1,585 | 0.88 |

[1] SPLs (levels at source) used for calculations were: 204 dB for impact driving, 178 dB for vibratory driving steel piles, and 168 dB for vibratory driving plastic piles.

[2] Areas presented take into account attenuation and/or shadowing by land. Calculated distances to relevant thresholds cannot be reached in most directions form source piles. Please see Figures 6–1 through 6–3 in the Navy's application.

The Mayport turning basin does not represent open water, or free field, conditions. Therefore, sounds would attenuate as per the confines of the basin, and may only reach the full estimated distances to the harassment thresholds via the narrow, east-facing entrance channel. Distances shown in Table 1 are estimated for free-field conditions, but areas are calculated per the actual conditions of the action area. See Figures 6–1 through 6–3 of the Navy's application for a depiction of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

**Comments and Responses**

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on August

22, 2013 (78 FR 52148). NMFS received comments from the Marine Mammal Commission (Commission). The Commission's comments and our responses are provided here, and the comments have been posted on the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

*Comment 1:* The Commission recommends that we require the Navy to implement soft start procedures if impact pile driving activities have ceased for at least 15 minutes.

*Response:* We do not believe the recommendation would be effective in reducing the number or intensity of incidents of harassment—in fact, we believe that implementation of this recommendation may actually increase the number of incidents of harassment by extending the overall project duration—while imposing a high cost in terms of operational practicability. We note here that, while the Commission recommends use of the measure to avoid serious injury (i.e., injury that will result in death of the animal), such an outcome is extremely unlikely even in the absence of any mitigation measures (as described in the FR notice). Therefore, we address our response to the potential usefulness of the measure in avoidance of non-serious injury (i.e., Level A harassment).

Soft start is required for the first impact pile driving of each day and, subsequently, after any impact pile driving stoppage of 30 minutes or greater. The purpose of a soft start is to provide a ''warning'' to animals by initiating the production of underwater sound at lower levels than are produced at full operating power. This warning is presumed to allow animals the opportunity to move away from an unpleasant stimulus and to potentially reduce the intensity of behavioral reactions to noise or prevent injury of animals that may remain undetected in the zone ensonified to potentially injurious levels. However, soft start requires additional time, resulting in a larger temporal footprint for the project. That is, soft start requires a longer cumulative period of pile driving (i.e., hours) but, more importantly, leads to a longer overall duration (i.e., more days on which pile driving occurs). In order to maximize the effectiveness of soft start while minimizing the implementation costs, we require soft start after a period of extended and unobserved relative silence (i.e., at the beginning of the day, after the end of the required 30-minute post-activity monitoring period, or after 30 minutes with no impact driving). It is after these periods that marine mammals are more likely to closely approach the site (because it is relatively quiet) and less likely to be observed prior to initiation of the activity (because continuous monitoring has been interrupted).

The Commission justifies this recommendation on the basis of the potential for undetected animals to remain in the shutdown zone. This may occur because an animal remains submerged and is not available to be observed, because dolphins occur singly or in pairs and are difficult to perceive, or because the observer simply does not detect the animal in the period when it surfaces and is available to be observed. However, we do not believe that time is a factor in determining the influence of these biases on the probability of observing an animal in the shutdown zone. That is, an observer is not more likely to detect the presence of an animal at the 15-minute mark of continuous monitoring than after 30 minutes (it is established that soft start is required after any unmonitored period). Therefore, requiring soft start after 15 minutes (i.e., more soft starts) is not likely to result in increased avoidance of injury. Finally, we do not believe that the use of soft start may be expected to appreciably reduce the potential for injury where the probability of detection is high (e.g., small, shallow zones with good environmental conditions). Rather, the primary purpose of soft start under such conditions is to reduce the intensity of potential behavioral reactions to underwater sound in the disturbance zone.

As noted above, there are multiple reasons why marine mammals may remain in a shutdown zone and yet be undetected by observers. Animals are missed because they are underwater (availability bias) or because they are available to be seen, but are missed by observers (perception and detection biases) (e.g., Marsh and Sinclair, 1989). Negative bias on perception or detection of an available animal may result from environmental conditions, limitations inherent to the observation platform, or observer ability. While missed detections are possible in theory, this would require that an animal would either (a) remain submerged (i.e., be unavailable) for periods of time approaching or exceeding 15 minutes and/or (b) remain undetected while at the surface. We provide further site-specific detail below.

First, the Mayport turning basin is an enclosed area, and provides a relatively sheltered environment and circumscribed area of observation. We would therefore expect a high probability of detection given an animal at the surface and multiple well-positioned observers. Unlike the moving aerial or vessel-based observation platforms for which detectability bias is often a concern, the observers here will be positioned in the most suitable locations to ensure high detectability (randomness of observations is not a concern, as it is for abundance sampling). Regarding availability, the only species likely to be present in the turning basin is the bottlenose dolphin.

For bottlenose dolphins, while a significant proportion of time is typically spent submerged, dive intervals are also typically very short, meaning that surfacing occurs frequently. Mate et al. (1995) report a typical dive duration from another shallow bay (Tampa Bay) of only 25 seconds. While bottlenose dolphins may display deeper dive times in other contexts (e.g., deep-water foraging), there is no conceivable reason why a dolphin would remain submerged for durations approaching 15 minutes in the turning basin (i.e., a shallow environment of no particular significance for foraging). Short dive duration means high availability, providing additional confidence in the ability of observers to detect marine mammals in the shutdown zones estimated for this project.

*Comment 2:* The Commission recommends that we require the Navy to monitor the extent of the Level B harassment zones by strategically positioning the observers (e.g., one monitoring the immediate shutdown zone and portions of the turning basin and the other monitoring portions of the turning basin, the entrance to that basin, and portions of the Atlantic Ocean) to (1) determine more accurately the numbers of marine mammals taken during pile driving activities and (2) characterize the effects on those marine mammals.

*Response:* We support the Commission's recommendation, and agree that the recommended changes to the Navy's Monitoring Plan could be useful in achieving a more accurate (1) determination of the numbers of marine mammals taken during pile driving activities and (2) characterization of the effects on those marine mammals. One existing observer will be required to observe the turning basin, the entrance to that basin, and portions of the Atlantic Ocean, to the extent possible. In addition, we will require a third shore-based observer be present for three days of vibratory driving, to be focused solely on the entrance to the turning basin and surrounding, observable portions of the Atlantic Ocean that may be ensonified by project activities.

**Description of Marine Mammals in the Area of the Specified Activity**

There are four marine mammal species which may inhabit or transit through the waters nearby NSM at the mouth of the St. Johns River and in nearby nearshore Atlantic waters. These include the bottlenose dolphin, Atlantic spotted dolphin, North Atlantic right whale (*Eubalaena glacialis*), and humpback whale (*Megaptera novaeangliae*). Multiple stocks of bottlenose dolphins may be present in the action area, either seasonally or year-round. Multiple additional cetacean species occur in South Atlantic waters but would not be expected to occur in shallow nearshore waters of the action area. The right and humpback whales are both listed under the Endangered Species Act (ESA) as endangered; however, for reasons described in the FR notice (78 FR 52148; August 22, 2013), the humpback whale and right whale are not expected to be harassed by project activities and are therefore excluded from further analysis and not discussed further in this document. Table 2 lists the marine mammal species with potential for occurrence in the vicinity of NSM during the project timeframe. The FR notice (78 FR 52148; August 22, 2013) summarizes the population status and abundance of these species, and the Navy's application provides detailed life history information.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NSM

| Species | Stock abundance [1] (CV, $N_{min}$) | Relative occurrence in action area | Season of occurrence |
|---|---|---|---|
| North Atlantic right whale | 444 (n/a, 444) | Rare inshore, regular near/offshore. | November to April. |
| Western North Atlantic stock | | | |
| Humpback whale | 823 (n/a, 823) | Rare | Fall-Spring. |
| Gulf of Maine stock | | | |
| Atlantic spotted dolphin | 26,798 (0.66, 16,151) | Rare | Year-round. |
| Western North Atlantic stock | | | |
| Bottlenose dolphin | 81,588 (0.17, 70,775) | Rare | Year-round. |
| Western North Atlantic offshore stock | | | |
| Bottlenose dolphin | 12,482 (0.32, 9,591) | Possibly common (seasonal) | January to March. |
| Western North Atlantic coastal, southern migratory stock | | | |
| Bottlenose dolphin | 3,064 (0.24, 2,511) | Possibly common | Year-round. |
| Western North Atlantic coastal, northern Florida stock | | | |
| Bottlenose dolphin | 412[2] (0.06, unknown) | Possibly common | Year-round. |
| Jacksonville Estuarine System stock | | | |

[1] NMFS marine mammal stock assessment reports at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.* CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance.
[2] This abundance estimate is considered an overestimate because it includes non- and seasonally-resident animals.

**Potential Effects of the Specified Activity on Marine Mammals**

We have determined that pile driving, as outlined in the project description, has the potential to result in behavioral harassment of marine mammals that may be present in the project vicinity while construction activity is being conducted. The FR notice (78 FR 52148; August 22, 2013) provides a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals.

**Anticipated Effects on Habitat**

The proposed activities at NSM would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion in proposed IHA FR notice). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (i.e., fish) near NSM and minor impacts to the immediate substrate during installation and removal of piles during the wharf construction project. The FR notice (78 FR 52148; August 22, 2013) describes these potential impacts in greater detail.

**Mitigation**

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Measurements from proxy pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOIs; see ''Estimated Take by Incidental Harassment''); these values were used to develop mitigation measures for pile driving activities at NSM. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy will conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

*Monitoring and Shutdown for Pile Driving*

The following measures apply to the Navy's mitigation through shutdown and disturbance zones:

*Shutdown Zone*—For all pile driving and removal activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the 180 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon

sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury, serious injury, or death of marine mammals. Radial distances for shutdown zones are shown in Table 1. However, for this project, a minimum shutdown zone of 15 m will be established during all pile driving activities, regardless of the estimated zone. Vibratory pile driving activities are not predicted to produce sound exceeding the Level A standard, but these precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to further reduce any possibility of acoustic injury. For impact driving of steel piles, the radial distance of the shutdown would be established at 40 m (Table 1).

*Disturbance Zone*—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for pulsed and non-pulsed sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 1. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (e.g., what may be reasonably observed by visual observers stationed on land in the vicinity of the turning basin) will be observed.

In order to document observed incidences of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. If acoustic monitoring is being conducted for that pile, a received SPL may be estimated, or the received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating incidental harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data. That information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

*Monitoring Protocols*—Monitoring will be conducted before, during, and after pile driving activities. In addition, observers shall record all incidences of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Please see the Monitoring Plan (available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), developed by the Navy in agreement with NMFS, for full details of the monitoring protocols. Monitoring will take place from 15 minutes prior to initiation through 30 minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are typically trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science, wildlife management, mammalogy, or related fields (bachelor's degree or higher is required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary. For this project, we waive the requirement for advanced education, as the observers will be personnel hired by the engineering contractor that may not have backgrounds in biological science or related fields. These observers will be required to watch the Navy's Marine Species Awareness Training video and shall receive training sufficient to achieve all other qualifications listed above (where relevant).

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for 15 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (i.e., when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity will be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Monitoring will be conducted

throughout the time required to drive a pile.

*Soft Start*

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a 30-second waiting period. This procedure is repeated two additional times. However, implementation of soft start for vibratory pile driving during previous pile driving work conducted by the Navy at another location has led to equipment failure and serious human safety concerns. Therefore, vibratory soft start is not required as a mitigation measure for this project, as we have determined it not to be practicable. We have further determined this measure unnecessary to providing the means of effecting the least practicable impact on marine mammals and their habitat. Prior to issuing any further IHAs to the Navy for pile driving activities in 2014 and beyond, we plan to facilitate consultation between the Navy and other practitioners (e.g., Washington State Department of Transportation and/or the California Department of Transportation) in order to determine whether the potentially significant human safety issue is inherent to implementation of the measure or is due to operator error. For impact driving, soft start will be required, and contractors will provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 30-second waiting period, then two subsequent three-strike sets.

We have carefully evaluated the applicant's planned mitigation measures and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's planned measures, as well as any other potential measures that may be relevant to the specified activity, we have determined that these mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. The Navy's planned monitoring and reporting is also described in their Marine Mammal Monitoring Plan.

*Acoustic Monitoring*

The Navy will implement a sound source level verification study during the specified activities. Data would be collected in order to estimate airborne and underwater source levels. Monitoring will include two underwater positions and one airborne monitoring position. These exact positions will be determined in the field during consultation with Navy personnel, subject to constraints related to logistics and security requirements. Underwater sound monitoring will include the measurement of peak and rms sound pressure levels during pile driving activities at Wharf C–2. Typical ambient levels will be measured during lulls in the pile installation and reported in terms of rms sound pressure levels. Frequency spectra will be provided for pile driving sounds.

*Visual Marine Mammal Observations*

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Navy will implement the following procedures for pile driving:

- MMOs will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

*Data Collection*

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

- Locations of all marine mammal observations; and
- Other human activity in the area.

*Reporting*

A draft report will be submitted to NMFS within 90 days of the completion of marine mammal monitoring. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any adverse responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and a refined take estimate based on the number of marine mammals observed during the course of construction. A final report will be prepared and submitted within 30 days following resolution of comments on the draft report. A technical report summarizing the acoustic monitoring data collected will be prepared within 75 days of completion of monitoring.

**Estimated Take by Incidental Harassment**

With respect to the activities described here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].'' All anticipated takes will be by Level B harassment, involving temporary changes in behavior. The planned mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered discountable. However, it is unlikely that injurious or lethal takes would occur even in the absence of the proposed mitigation and monitoring measures.

If a marine mammal responds to a stimulus by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. This practice potentially overestimates the numbers of marine mammals taken. In addition, it is often difficult to distinguish between the number of individuals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (e.g., because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The turning basin is not important habitat for marine mammals, as it is a man-made, semi-enclosed basin with frequent industrial activity and regular maintenance dredging. The small area of ensonification extending out of the turning basin into nearshore waters is also not believed to be of any particular importance, nor is it considered an area frequented by marine mammals. Bottlenose dolphins may be observed at any time of year in estuarine and nearshore waters of the action area, but sightings of other species are rare. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. The Navy has requested authorization for the incidental taking of small numbers of bottlenose dolphins and Atlantic spotted dolphins in the Mayport turning basin and associated nearshore waters that may be ensonified by project activities.

*Marine Mammal Densities*

For all species, the best scientific information available was used to derive density estimates and the maximum appropriate density value for each species was used in the marine mammal take assessment calculation. Density values for the Atlantic spotted dolphin were derived from global density estimates produced by Sea Mammal Research Unit, Ltd. (SMRU), as presented in DoN (2012), and the highest seasonal density (spring; 0.6803/km$^2$) was used for take estimation. Density for bottlenose dolphin is derived from site-specific surveys conducted by the Navy. Only bottlenose dolphins have been observed in the turning basin; it is not currently possible to identify observed individuals to stock. This survey effort consists of twelve half-day observation periods covering mornings and afternoons during December 10–13, 2012, and March 4–7, 2013. During each observation period, two observers (one at ground level and one positioned at a fourth-floor observation point) monitored for the presence of marine mammals in the turning basin (0.712 km$^2$) and tracked their movements and behavior while inside the basin, with observations recorded for five-minute intervals every half-hour. Morning sessions typically ran from 7:00–11:30 and afternoon sessions from 1:00 to 5:30. Most observations were of individuals or pairs (mode of 1) although a maximum group size of six was observed. It was assumed that the average observed group size (1.8) could occur in the action area each day, and was thus used to calculate a density of 2.53/km$^2$. For comparison, the maximum density value available from the NMSDD for bottlenose dolphins in inshore areas is significantly lower (winter, 0.217/km$^2$, SMRU estimate) and would likely underestimate the occurrence of bottlenose dolphins in the turning basin.

*Description of Take Calculation*

The take calculations presented here rely on the best data currently available for marine mammal populations in the vicinity of Mayport. The methodology for estimating take was described in detail in the FR notice (78 FR 52148; August 22, 2013). The ZOI impact area is the estimated range of impact to the sound criteria. The distances specified in Table 1 were used to calculate ZOIs around each pile. The ZOI impact area calculations took into consideration the possible affected area with attenuation due to the constraints of the basin. Because the basin restricts sound from propagating outward, with the exception of the east-facing entrance channel, the radial distances to thresholds cannot generally be reached.

While pile driving can occur any day, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The exposure assessment methodology is an estimate of the numbers of individuals exposed to the effects of pile driving activities exceeding NMFS-established thresholds. Of note in these exposure estimates, mitigation methods (i.e., visual monitoring and the use of

shutdown zones; soft start for impact pile driving) were not quantified within the assessment and successful implementation of mitigation is not reflected in exposure estimates. In addition, equating exposure with response (i.e., a behavioral response meeting the definition of take under the MMPA) is simplistic and conservative assumption. For these reasons, results from this acoustic exposure assessment likely overestimate take estimates to some degree.

TABLE 3—NUMBER OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

| Species | Activity | Estimated incidences of take [1] | | Total |
|---|---|---|---|---|
| | | Level A | Level B | |
| Bottlenose dolphin [2] | Impact driving (steel piles) | 0 | 40 | 365 |
| | Vibratory driving (steel piles) | 0 | 315 | |
| | Vibratory driving (plastic piles) | 0 | 10 | |
| Atlantic spotted dolphin | Impact driving (steel piles) | 0 | 0 | 95 |
| | Vibratory driving (steel piles) | 0 | 90 | |
| | Vibratory driving (plastic piles) | 0 | 5 | |

[1] Acoustic injury threshold is 180 dB for cetaceans; behavioral harassment threshold applicable to impact pile driving is 160 dB and to vibratory driving is 120 dB.
[2] It is impossible to estimate from available information which stock these takes may accrue to.

Only bottlenose dolphins are likely to occur inside the turning basin; therefore, the estimates for spotted dolphin are likely overestimates because the ZOI areas include the turning basin. Bottlenose dolphins are likely to be exposed to sound levels that could cause behavioral harassment if they enter the turning basin while pile driving activity is occurring. Outside the turning basin, potential takes could occur if individuals of these species move through the ensonified area when pile driving is occurring. It is not possible to determine, from available information, how many of the estimated incidences of take for bottlenose dolphins may accrue to the different stocks that may occur in the action area. Similarly, animals observed in the ensonified areas will not be able to be identified to stock on the basis of visual observation.

**Negligible Impact and Small Numbers Analyses and Determinations**

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, we consider a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

*Small Numbers Analysis*

The number of incidences of take authorized for Atlantic spotted dolphins is small relative to the relevant stock—less than one percent. As described previously, of the 365 incidences of behavioral harassment predicted to occur for bottlenose dolphin, we have no information allowing us to parse those predicted incidences amongst the three stocks of bottlenose dolphin that may occur in the ensonified area. Therefore, we assessed the total number of predicted incidences of take against the best abundance estimate for each stock, as though the total would occur for the stock in question. For two of the bottlenose dolphin stocks, the total predicted number of incidences of take authorized would be considered small—less than three percent for the southern migratory stock and less than twelve percent for the northern Florida coastal stock—even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for bottlenose dolphins in estuarine and nearshore waters, there is likely to be some overlap in individuals present day-to-day.

The total number of authorized takes proposed for bottlenose dolphins, if assumed to accrue solely to new individuals of the JES stock, is higher relative to the total stock abundance, which is currently considered unknown. However, these numbers represent the estimated incidences of take, not the number of individuals taken. That is, it is highly likely that a relatively small subset of JES bottlenose dolphins would be harassed by project activities. JES bottlenose dolphins range from Cumberland Sound at the Georgia-Florida border south to approximately Palm Coast, Florida, an area spanning over 120 linear km of coastline and including habitat consisting of complex inshore and estuarine waterways. JES dolphins, divided by Caldwell (2001) into Northern and Southern groups, show strong site fidelity and, although members of both groups have been observed outside their preferred areas, it is likely that the majority of JES dolphins would not occur within waters ensonified by project activities. Further, although the largest area of ensonification is predicted to extend up to 7.5 km offshore from NSM, estuarine dolphins are generally considered as restricted to inshore waters and only 1–2 km offshore. In summary, JES dolphins are (1) known to form two groups and exhibit strong site fidelity (i.e., individuals do not generally range throughout the recognized overall JES stock range); (2) would not occur at all in a significant portion of the larger ZOI extending offshore from NSM; and (3) the specified activity will be stationary within an enclosed basin not recognized as an area of any special significance that would serve to attract or aggregate dolphins. We therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that these estimated incidences of take represent small numbers of bottlenose dolphins.

*Negligible Impact Analysis*

Pile driving activities associated with the Navy's wharf project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the likely methods of installation and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation, and this activity does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (less than 180 dB) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. Environmental conditions in the confined and protected Mayport turning basin mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury, serious injury, or mortality.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to numerous other construction activities conducted in San Francisco Bay and in the Puget Sound region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for bottlenose dolphins, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the turning basin while the activity is occurring.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any significant habitat within the project area, including known areas or features of special significance for foraging or reproduction; (4) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, none of these stocks are listed under the ESA, although coastal bottlenose dolphins are considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

*Determinations*

The number of marine mammals actually incidentally harassed by the project will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity. However, we find that the number of potential takings authorized (by level B harassment only), which we consider to be a conservative, maximum estimate, is small relative to the relevant regional stock or population numbers, and that the effect of the activity will be mitigated to the level of least practicable impact through implementation of the mitigation and monitoring measures described previously. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, we find that the total taking from the activity will have a negligible impact on the affected species or stocks.

## Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

## Endangered Species Act (ESA)

There are no ESA-listed marine mammals expected to occur in the action area. Therefore, the Navy has not requested authorization of the incidental take of ESA-listed species and no such authorization is issued; therefore, no consultation under the ESA is required.

## National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the wharf recapitalization project. NMFS made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the Navy's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) on November 20, 2013. The Navy's EA and NMFS' FONSI for this action may be found at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

## Authorization

As a result of these determinations, we have issued an IHA to the Navy to conduct the specified activities in Naval Station Mayport, FL for one year, from December 1, 2013, through November 30, 2014, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 25, 2013.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–28650 Filed 11–27–13; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC350**

### Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Light Station Restoration and Maintenance at Northwest Seal Rock, Del Norte County, California

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

**ACTION:** Notice; issuance of an incidental take authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we, NMFS, have issued an Incidental Harassment Authorization (Authorization) to the St. George Reef Lighthouse Preservation Society (Society) to take four species of marine mammals, by Level B harassment only, incidental to conducting helicopter operations, and lighthouse renovation and light maintenance activities on the St. George Reef Light Station on Northwest Seal Rock (NWSR) offshore of Crescent City, California in the northeast Pacific Ocean, from the period of November 2013 through December 2013.

**DATES:** This authorization is effective from November 25, 2013, through December 31, 2013.

**ADDRESSES:** A copy of the Authorization and application are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, NMFS, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

We shall allow authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat (i.e., mitigation); and requirements pertaining to the monitoring and reporting of such takings. We have defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorization for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the **Federal Register** within 30 days of our determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

**Summary of Request**

We received an application on May 8, 2012, from the Society for the taking by harassment, of marine mammals, incidental to conducting aircraft operations and restoration and maintenance activities on the St. George Reef Light Station (Station) for the 2013 season. We determined that application complete and adequate on November 27, 2012 and made the complete application available for public comment (see **ADDRESSES**) in January 2013.

The Society's restoration activities would: (1) Restore and preserve the Station on a monthly basis (November through December); and (2) perform periodic, annual maintenance on the Station's optical light system. The Station, which is listed in the National Park Service's National Register of Historic Places, is located on NWSR offshore of Crescent City, California in the northeast Pacific Ocean.

The specified activities would occur in the vicinity of a possible pinniped haul out site located on NWSR. Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (e.g., painting, plastering, welding, and glazing); (3) maintenance activities (e.g., bulb replacement and automation of the light system); and (4) human presence, may have the potential to cause any pinnipeds hauled out on NWSR to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and the Society has requested an authorization to take 204 California sea lions (*Zalophus californianus*); 36 Pacific Harbor seals (*Phoca vitulina*); 172 Steller sea lions (*Eumetopias jubatus*); and six northern fur seals (*Callorhinus ursinus*) by Level B harassment.

To date, we have issued three 1-year Authorizations to the Society for the conduct of the same activities from 2009 to 2012. This will be the Society's fourth Authorization for the same activities for the remainder of the 2013 season.

**Description of the Specified Activity and Specified Geographic Region**

The Society would conduct aircraft operations, lighthouse restoration, and light maintenance activities between November 25, 2013, through December 31, 2013, at a maximum frequency of

one session per month. The duration for each session would last no more than three days (e.g., Friday, Saturday, and Sunday).

The Station is located on a small, rocky islet (41°50′24″ N, 124°22′06″ W) approximately nine kilometers (km) (6.0 miles (mi)) in the northeast Pacific Ocean, offshore of Crescent City, California (Latitude: 41°46′48″ N; Longitude: 124°14′11″ W).

We outlined the purpose of the Society's activities in a previous notice for the proposed authorization (78 FR 1838, January 9, 2013). The proposed activities have not changed between the proposed authorization notice and this final notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, including aircraft and acoustic source specifications, the reader should refer to the notice for the proposed authorization (78 FR 1838, January 9, 2013).

**Comments and Responses**

We published a notice of receipt of the Society's application and proposed Authorization in the **Federal Register** on January 9, 2013 (78 FR 1838). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that the required monitoring and mitigation measures are carried out (e.g., restrictions on the timing and frequency of activities, restrictions on helicopter approaches, timing measures for helicopter landings, and measures to minimize acoustic and visual disturbances) as described in the notice of the proposed authorization (78 FR 1838, January 9, 2013) and the application. We have included all measures proposed in the notice of the proposed authorization (78 FR 1838, January 9, 2013) in the Authorization.

**Description of Marine Mammals in the Area of the Specified Activity**

The marine mammal species likely to be harassed incidental to helicopter operations, lighthouse restoration, and lighthouse maintenance on NWSR are the California sea lion, the Pacific harbor seal, and the eastern Pacific stock of northern fur seal, and the eastern Distinct Population Segment (DPS) of Steller sea lion which NMFS has removed from the list of threatened species under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), effective in November, 2013. Steller sea lions and northern fur seals are not listed as threatened or endangered under the ESA but are categorized as depleted under the MMPA. California sea lions and Pacific harbor seals are not listed as threatened or endangered under the ESA nor are they categorized as depleted under the MMPA.

**Potential Effects of the Activity on Marine Mammals**

Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (e.g., painting, plastering, welding, and glazing); and (3) maintenance activities (e.g., bulb replacement and automation of the light system) may have the potential to cause Level B harassment of any pinnipeds hauled out on NWSR. The effects of sounds from helicopter operations and/or restoration and maintenance activities might include one of the following: temporary or permanent hearing impairment or behavioral disturbance (Southall, *et al.,* 2007).

The notice for the proposed Authorization (78 FR 1838, January 9, 2013) included a discussion of the effects of sounds from: (1) The sound levels produced by the helicopter; (2) behavioral reactions (or lack thereof) of pinnipeds to helicopter operations and light construction noise; (3) hearing impairment and other non-auditory physical effects; (4) behavioral reactions to visual stimuli; (5) and specific observations gathered during previous monitoring of the marine mammals present on NWSR. We have reviewed these data and determined them to be the best available information for the purposes of this Authorization.

To summarize, the effects of the Society's helicopter operations and restoration activities on the marine mammals present on NWSR would range from no response to a short-term startle response. These behavioral changes have the potential to cause the animals to haul-out leading to temporary displacement from the island and we expect no permanent abandonment of NWSR by the animals. Finally, we anticipate that there will be no instances of injury or mortality during the project. No activities would occur on pinniped rookeries and we do not expect mother and pup separation or crushing of pups to occur.

**Anticipated Effects on Marine Mammal Habitat**

The notice for the proposed Authorization (78 FR 1838, January 9, 2013) included a discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates. While we anticipate that the specified activity may result in marine mammals avoiding NWSR during the helicopter operations and restoration activities, this impact to habitat is temporary and reversible. We consider the impacts of avoidance in the notice for the proposed Authorization (78 FR 1838, January 9, 2013) as behavioral modification.

**Mitigation**

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The Society has based the mitigation measures which they will implement during the proposed helicopter operations and restoration activities, on the following: (1) Protocols used during previous Authorizations for helicopter operations and restoration activities as approved by us; (2) recommended best practices in Richardson *et al.* (1995); and (3) reasonable and prudent measures implemented by the terms and conditions of previous section 7 ESA Biological Opinion (BiOp) Incidental Take Statement (ITS).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities, the Society and/or its designees will implement the following mitigation measures for marine mammals:

(1) Limit the time and frequency of the restoration activities;

(2) Employ helicopter approach and timing techniques; and

(3) Avoidance of visual and acoustic contact with marine mammals by the Society and/or its designees.

*Time and Frequency:* The Society will conduct lighthouse restoration activities at maximum frequency of once per month between November 25, 2013 through December 31, 2013. Each restoration session will last no more than three days. Maintenance of the light beacon will occur only in conjunction with restoration activities.

*Helicopter Approach and Timing Techniques:* The Society shall ensure that helicopter approach patterns to the lighthouse will be such that the timing techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach NWSR when the tide is too

high for the marine mammals to haulout on NWSR.

Since the most severe impacts (stampede) are precipitated by rapid and direct helicopter approaches, initial approach to the Station must be offshore from the island at a relatively high altitude (e.g., 244–305 meters; 800–1,000 feet,). Before the final approach, the helicopter shall circle lower, and approach from area where the density of pinnipeds is the lowest. If for any safety reasons (e.g., wind condition) such helicopter approach and timing techniques cannot be achieved, the Society must abort the restoration and maintenance activities for that day.

*Avoidance of Visual and Acoustic Contact With Marine Mammals:* The Society's members and restoration crews shall be instructed to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse. The door to the lower platform (which is used at times by pinnipeds) shall remain closed and barricaded.

**Mitigation Conclusions**

We have carefully evaluated the Society's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's mitigation measures, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring**

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

The Society continues to sponsor marine mammal monitoring to implement the mitigation measures that require real-time monitoring and to satisfy the monitoring requirements of the incidental harassment authorization. At least once during the period between November 15, 2013 through December 31, 2013, the Society will have a qualified biologist present during all three workdays at the Station. The biologist shall document use of the island by the pinnipeds, frequency, (i.e., dates, time, tidal height, species, numbers present, and any disturbances), and note any responses to potential disturbances. In the event of any observed Steller sea lion injury, mortality, or the presence of newborn pup, the Society will notify the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources immediately.

Aerial photographic surveys may provide the most accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. The Society will photograph the island from the same helicopter used to transport the Society's personnel to the island during restoration trips. A skilled photographer shall take photographs of all marine mammals hauled out on the island at an altitude greater than 300 meters (984 feet), prior to the first landing on each visit included in the monitoring program. The Society will provide to us photographic documentation of marine mammals present at the end of each three-day work session for a before and after comparison. The Society will forward these photographs to a biologist capable of discerning marine mammal species.

The Society shall provide the data to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see Reporting). The Society will also provide the original photographs to us or other marine mammal experts for inspection and further analysis.

**Reporting**

The Society's personnel will record data to document the number of marine mammals exposed to helicopter noise and to document apparent disturbance reactions or lack thereof. The Society and NMFS will use the data to estimate numbers of animals potentially taken by Level B harassment.

*Interim Monitoring Report*

The Society will submit interim monitoring reports to the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources no later than 30 days after the conclusion of each monthly session. The interim report will describe the operations that were conducted and sightings of marine mammals near the project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring.

Each interim report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

*Final Monitoring Report*

In addition to the interim reports, the Society will submit a draft Final Monitoring Report to us no later than 90 days after the project is completed to the Regional Administrator and the Director of Office of Protected Resources at NMFS Headquarters. Within 30 days after receiving comments from NMFS on the draft Final Monitoring Report, the Society must submit a Final Monitoring Report to the Regional Administrator and the NMFS Director of Office of Protected Resources. If the Society receives no comments from us on the draft Final Monitoring Report, we will consider the draft Final Monitoring Report to be the final version.

The final report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals,

observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the Authorization (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., stampede), the Society shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*).

The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until we are able to review the circumstances of the prohibited take. We will work with the Society to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Society may not resume their activities until notified by us via letter, email, or telephone.

In the event that the Society discovers an injured or dead marine mammal, and the biologist (if present) determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the Society will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while we review the circumstances of the incident. We will work with the Society to determine whether modifications in the activities are appropriate.

In the event that the Society discovers an injured or dead marine mammal, and the lead biologist (if present) determines that the injury or death is not associated with or related to the activities authorized in the Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Society will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401 and/or by email to *Michael.Payne@noaa.gov* and *ITP.Cody@noaa.gov* and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. The Society will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We anticipate and authorize take by Level B harassment only for the proposed helicopter operations and restoration and maintenance activities on NWSR. Acoustic (i.e., increased sound) and visual stimuli generated during these proposed activities may have the potential to cause marine mammals in the harbor area to experience temporary, short-term changes in behavior.

Based on pinniped survey counts conducted by CCR on NWSR in the spring of 1997, 1998, 1999, and 2000 (CCR, 2001), we estimate that approximately 204 California sea lions (calculated by multiplying the average monthly abundance of California sea lions (zero in April, 1997 and 34 in April,1998) present on NWSR by 6 months of the restoration and maintenance activities), 172 Steller sea lions (NMFS' estimate of the maximum number of Steller sea lions that could be present on NWSR with a 95-percent confidence interval), 36 Pacific harbor seals (calculated by multiplying the maximum number of harbor seals present on NWSR (6) by 6 months), and 6 northern fur seals (calculated by multiplying the maximum number of northern fur seals present on NWSR (1) by 6 months) could be potentially affected by Level B behavioral harassment over the course of the Authorization. Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 51 hours of aircraft operations during the course of the activity. For this Authorization, we authorize the take of 204 California sea lions, 172 Stellar sea lions, 36 Pacific harbor seals, and 6 northern fur seals.

There is no evidence that the Society's planned activities could result in injury, serious injury or mortality within the action area. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality. Thus, we do not propose to authorize any injury, serious injury or mortality. We expect all potential takes to fall under the category of Level B harassment only.

**Encouraging and Coordinating Research**

The Society will continue to coordinate monitoring of pinnipeds during the helicopter operations and restoration activities which contribute to the basic knowledge of marine mammal biology on NWSR.

**Negligible Impact and Small Numbers Analysis and Determination**

We typically include our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** notices. Despite co-locating these terms, we acknowledge that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

We have defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is

not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, we consider:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment; and

(3) The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

As mentioned previously, we estimate that four species of marine mammals could be potentially affected by Level B harassment over the course of this Authorization. For each species, these numbers are small numbers (each, less than or equal to two percent) relative to the population size. These incidental harassment take numbers represent approximately 0.14 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.06 percent of the San Miguel Island stock of northern fur seal.

For reasons stated previously in this document and in the notice for the proposed Authorization (78 FR 1838, January 9, 2013), the specified activities associated with the Society's helicopter operations and restoration/maintenance activities are not likely to cause permanent threshold shift, or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow helicopter approaches, we expect marine mammals to gradually move away from a noise source that is annoying prior to its becoming potentially injurious; and

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the incorporation of the required monitoring and mitigation measures.

We do not anticipate takes by Level A harassment, serious injury, or mortality to occur as a result of the Society's specified activities. We are not authorizing Level A harassment for this specified activity. We only anticipate short-term behavioral disturbance to occur due to the brief and sporadic duration of the activities; the availability of alternate areas near NWSR for marine mammals to avoid the resultant acoustic disturbance; and limited access to NWSR during the pupping season.

These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we have determined that the total taking from the proposed activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(D) of the MMPA.

**Endangered Species Act (ESA)**

On October 23, 2013, NMFS announced the removal of the eastern distinct population segment of Steller sea lions from the list of threatened species under the ESA. With the delisting, federal agencies proposing actions that may affect the eastern Steller sea lions are no longer required to consult with NMFS under section 7 of the ESA.

**National Environmental Policy Act (NEPA)**

To meet our NEPA requirements for the issuance of an Authorization to the Society, we prepared an Environmental Assessment (EA) in 2010 that was specific to conducting aircraft operations and restoration and maintenance work on the St. George Reef Light Station. The EA, titled ''Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Aircraft Operations, Lighthouse Restoration and Maintenance Activities on St. George Reef Lighthouse Station in Del Norte County, California,'' evaluated the impacts on the human environment of our authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. At that time, we concluded that issuance of an Authorization November 1 through April 30, annually would not significantly affect the quality of the human environment and issued a Finding of No Significant Impact (FONSI) for the 2010 EA regarding the Society's activities. In conjunction with the Society's 2013 application, we have again reviewed the 2010 EA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2010 FONSI. An electronic copy of the EA and the FONSI for this activity is available upon request (see **ADDRESSES**).

**Determinations**

We have determined that the impact of conducting the specific helicopter operations and restoration activities described in this notice and in the Authorization request in the specific geographic region in the northeastern Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

**Authorization**

As a result of these determinations, we, NMFS, have issued an Incidental Harassment Authorization to the Society to conduct helicopter operations and restoration and maintenance work on the St. George Reef Light Station on Northwest Seal Rock in the northeast Pacific Ocean from the period of November 25, 2013, through December 31, 2013, provided the previously

mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 25, 2013.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–28651 Filed 11–27–13; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

**DATES:** *Effective Date:* 12/30/2013.

**ADDRESS:** 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:**

### Additions

On 6/28/2013 (78 FR 38952–38953); 8/9/2013 (78 FR 48656–48657); and 9/6/2013 (78 FR 54871), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following products and service are added to the Procurement List:

*Products*

**Binder, Loose-leaf, View Framed, ½″**

*NSN:* 7510–01–462–1384—Black.
*NSN:* 7510–01–462–1387—White.

**Binder, Loose-leaf, View Framed, 1″**

*NSN:* 7510–01–462–1388—Navy Blue.
*NSN:* 7510–01–462–1390—Black.

**Binder, Loose-leaf, View Framed, 1½″**

*NSN:* 7510–01–462–1389, Black.
*NSN:* 7510–01–462–1391 White.
*NPA:* South Texas Lighthouse for the Blind, Corpus Christi, TX.
*Contracting Activity:* General Services Administration, New York, NY.
*Coverage:* A-List for the Total Government Requirement as aggregated by the General Services Administration.

Serving Bowl, Patriotic, Plastic 7Qt/MR 358.

Serving Bowl, Holiday, Plastic 7Qt/MR 370.

Chip and Dip Bowl, Holiday, Plastic/MR 373.

*NPA:* Industries for the Blind, Inc., West Allis, WI.
*Contracting Activity:* Defense Commissary Agency, Fort Lee, VA.
*Coverage:* C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

*Service*

*Service Type/Location:* Courier Service, Michael E. DeBakey VA Medical Center, 2002 Holcombe Boulevard, Houston, TX.
*NPA:* Southeast Vocational Alliance, Inc., Houston, TX.
*Contracting Activity:* Department of Veterans Affairs, 580-Houston, Houston, TX.

### Deletions

On 9/20/2013 (78 FR 57844) and 10/25/2013 (78 FR 63967–63968), 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 and services 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 provide the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

### End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

*Products*

**Flexible Erasable Wall Planners**

*NSN:* 7510–01–600–8043—Dated 12-Month 2-Sided Laminated Wall Planner, 24″ x 37″
*NSN:* 7510–01–600–8028—Dated 18-month Paper Wall Planner, 24″ x 37″
*NPA:* The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
*Contracting Activity:* General Services Administration, FSS Household and Industrial Furniture, Arlington, VA.

*Services*

*Service Type/Location:* Integrated Prime Vendor Supply Chain Management Service [to support production, assembly, receipt, storage, packaging, preservation, delivery and related products/services for Expeditionary Force Provider (EFP) Modules and Modification System Cold Weather], US Army, Product Manager Force Sustainment Systems, Natick, MA.
*NPA:* ReadyOne Industries, Inc., El Paso, TX.

*Contracting Activity:* Dept of the Army, W6QK ACC–APG Natick, Natick, MA.
*Service Type/Location:* Integrated Prime Vendor, Supply Chain Management Service (inventory control, obsolescence identification, engineering support and some material procurement services), U.S. Navy, Naval Surface Warfare Center, 300 Highway 361, Crane, IN.
*NPA:* Knox County Association for Retarded Citizens, Inc., Vincennes, IN.
*Contracting Activity:* Dept of the Navy, NSWC Crane, Crane, IN.

**Barry S. Lineback,**
*Director, Business Operations.*

[FR Doc. 2013–28641 Filed 11–27–13; 8:45 am]
**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the procurement list.

**SUMMARY:** The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

**DATES:** Comments must be received on or before December 30, 2013.

**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.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Products*

**Jackets, Intermediate Weather Outer Layer (IWOL), Layer 6, Army, (FREE), Army, OCP**

*NSN:* 8415–01–583–9470—XSS
*NSN:* 8415–01–583–9471—XSR
*NSN:* 8415–01–583–9474—XSL
*NSN:* 8415–01–583–9479—SS
*NSN:* 8415–01–583–9480—SR
*NSN:* 8415–01–583–9483—SL
*NSN:* 8415–01–583–9485—MS
*NSN:* 8415–01–583–9488—MR
*NSN:* 8415–01–583–9445—ML
*NSN:* 8415–01–583–9447—LS
*NSN:* 8415–01–583–9449—LR
*NSN:* 8415–01–583–9450—LL
*NSN:* 8415–01–583–9451—XLS
*NSN:* 8415–01–583–9453—XLR
*NSN:* 8415–01–583–9454—XLL
*NSN:* 8415–01–583–9455—XXLS
*NSN:* 8415–01–583–9456—XXLR
*NSN:* 8415–01–583–9458—XXLL
*NPA:* Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC–APG NATICK, MA
*COVERAGE:* C-List for 100% of the requirement of the U.S. Army, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

**Trousers, Intermediate Weather Outer Layer (IWOL), Layer 6, (FREE), Army, OCP**

*NSN:* 8415–01–584–1635—XSS
*NSN:* 8415–01–584–1637—XSR
*NSN:* 8415–01–584–1639—XSL
*NSN:* 8415–01–584–1640—SS
*NSN:* 8415–01–584–1641—SR
*NSN:* 8415–01–584–1642—SL
*NSN:* 8415–01–584–1643—MS
*NSN:* 8415–01–584–1644—MR
*NSN:* 8415–01–584–1645—ML
*NSN:* 8415–01–584–1648—LS
*NSN:* 8415–01–584–1649—LR
*NSN:* 8415–01–584–1654—LL
*NSN:* 8415–01–584–1655—XLS
*NSN:* 8415–01–584–1656—XLR
*NSN:* 8415–01–584–1663—XLL
*NSN:* 8415–01–584–1665—XXLS
*NSN:* 8415–01–584–1672—XXLR
*NSN:* 8415–01–584–1674—XXLL
*NPA:* San Antonio Lighthouse for the Blind, San Antonio, TX
*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC–APG NATICK, MA
*COVERAGE:* C-List for 100% of the requirement of the U.S. Army, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.
*NSN:* 8950–01–E62–3516—Allspice, Ground, 6/16 oz. Bottles
*NSN:* 8950–01–E62–3528—Cloves, Ground, 6/16 oz. Bottles
*NSN:* 8950–01–E62–3532—Poppy Seed, Whole, 6/20 oz. Bottles
*NSN:* 8950–01–E62–3508—Rosemary Leaves, Ground, 6/11 oz. Bottles
*NSN:* 8950–01–E62–3524—Caribbean Jerk Seasoning Blend, 6/18 oz. Bottles
*NSN:* 8950–01–E62–3520—Chives, Dehydrated, Chopped, 6/1.35 oz. Bottles
*NSN:* 8950–01–E62–3526—Chinese 5 Spice, 6/16 oz. Bottles
*NSN:* 8950–01–E62–3510—Cilantro, Freeze Dried, 6/3.75 oz. Bottles
*NSN:* 8950–01–E62–3530—Tarragon, Whole, 6/3.5 oz. Bottles
*NSN:* 8950–01–E62–3512—Sage, Rubbed, 6/6 oz. Bottles
*NSN:* 8950–01–E62–3514—Rosemary Leaves, Whole, 6/6 oz. Bottles
*NSN:* 8950–01–E62–3518—Marjoram, Ground, 6/11 oz. Bottles
*NSN:* 8950–01–E62–3522—Garlic and Herb Seasoning, 6/18 oz. Bottles
*NSN:* 8950–01–E62–3506—Fennel Seed, Whole, 6/14 oz. Bottles
*NPA:* CDS Monarch, Webster, NY
*Contracting Activity:* DEFENSE LOGISTICS AGENCY TROOP SUPPORT, PHILADELPHIA, PA
*COVERAGE:* C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

**Blank Media Discs, CD–R, White, Thermal Printable, 52x Speed, 80Min/700MB, 50 Pack Spindle**

*NSN:* 7045–00–NIB–0386
*NPA:* North Central Sight Services, Inc., Williamsport, PA
*Contracting Activity:* DEFENSE LOGISTICS AGENCY TROOP SUPPORT, PHILADELPHIA, PA
*COVERAGE:* A-List for the Total Government Requirement as aggregated by the Defense Logistics Agency, Philadelphia, PA.

**Make-to-Order Medical Kit**

*NSN:* 6545–00–NIB–0114
*NPAs:* National Industries for the Blind, Alexandria, VA (Prime Contractor)
L.C. Industries for the Blind, Inc., Durham, NC
*Contracting Activity:* DEFENSE LOGISTICS AGENCY TROOP SUPPORT MEDICAL DIRECTORATE, PHILADELPHIA, PA
*COVERAGE:* C-List for the requirements of the Department of Defense as

aggregated by the Defense Logistics Agency Troop Support Medical Directorate.

*Additional Information:* The DOD requirement for Make-to-Order (MTO) Medical Kits is being proposed for addition to the Procurement List. If approved, AbilityOne Program nonprofit agency(ies) will be designated to provide MTO Medical Kits that are specific to the needs of DLA TS Medical Supply Operations customers. MTO Medical Kits are defined as kits which are built only after receipt of a customer requisition, are customized for the customer and include shipment of the end-item. These medical kits shall consist of medical and non-medical material and equipment components, such as bandages, instruments, pharmaceuticals, portable bags, chests, etc., that may be obtained from AbilityOne and/or a wide range of commercial sources. The Government reserves the right to move MTO Medical Kits to a Make-to-Stock Kit. A Make-to-Stock kit is defined as a kit that is put into a DLA stock location after the kit has been completely assembled to be managed as a DLA item of supply. Addition of MTO Medical Kits to the Procurement List mandates that DLA TS Medical Supply Operations offer the first opportunity to provide the MTO Medical Kits to the AbilityOne nonprofit agency(ies); after having received an offer of an MTO Medical Kit opportunity, the AbilityOne Program nonprofit agency(ies) may accept or reject a requirement/offer. The AbilityOne nonprofit agency(ies) will offer government Distribution and Pricing Agreements (DAPA) pricing or better for components in the MTO Medical Kits. DLA TS Medical Supply Operations will make a fair and reasonable price determination upon receipt of each price proposed by AbilityOne nonprofit agency(ies) to provide a specific MTO Medical Kit.

**Deletions**

The following products and services are proposed for deletion from the Procurement List:

**Products**

**Stamp Pad Ink**

*NSN:* 7510–01–316–7516—Refill Ink—Black 2 oz. roll-on
*NPA:* Arbor Products, Inc., Houston, TX
*Contracting Activity:* GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

**Paprika, Ground**

*NSN:* 8950–01–079–6942

**Garlic Powder**

*NSN:* 8950–01–254–2691

**Spices, Group 1 and 2**

*NSN:* 8950–00–NSH–0205—Pepper, Black, Ground, Restaurant Grind, 5 lb.
*NPA:* CDS Monarch, Webster, NY
*Contracting Activity:* DEFENSE LOGISTICS AGENCY TROOP SUPPORT, PHILADELPHIA, PA

**Services**

*Service Types/Location:* Grounds Maintenance, Janitorial Service, William Jefferson Clinton Birthplace Home NHS, 117 S. Hervey St., Hope, AR.
*NPA:* Rainbow of Challenges, Inc., Hope, AR
*Contracting Activity:* NATIONAL PARK SERVICE, MWR REGIONAL CONTRACTING, OMAHA, NE

**Barry S. Lineback,**
*Director, Business Operations.*

[FR Doc. 2013–28649 Filed 11–27–13; 8:45 am]
BILLING CODE 6353–01–P

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID USA–2013–0043]**

### Proposed Collection; Comment Request

**AGENCY:** U.S. Army Public Health Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the U.S. Army Public Health Command 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 January 28, 2014.

**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 U.S. Army Public Health Command (USAPHC), 5158 Blackhawk Road, ATTN: Joyce Woods, (MCHB–CS–CP), Aberdeen Proving Ground, MD 21010–5403, or call the Department of the Army Reports Clearance Officer at (703) 428–6440.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Application for Temporary Food Establishment, DD Form 2970; OMB Control Number TBD.

*Needs and Uses:* The information collection requirement is necessary for the installation Preventive Medicine Activity to evaluate a food vendor's ability to prepare and dispense safe food on the installation. The form, submitted one time by a food vendor requesting to operate a food establishment on a military installation, characterizes the types of foods, daily volume of food, supporting food equipment, and sanitary controls. Approval to operate the food establishment is determined by the installation's medical authority; the Preventive Medicine Activity conducts an operational assessment based on the food safety criteria prescribed in the Tri-Service Food Code (TB MED 530/NAVMED P–5010–1/AFMAN 48–147_IP). Food vendors who are deemed inadequately prepared to provide safe food service are disapproved for operating on the installation.

*Affected Public:* Business or other for-profit; Not-for-profit institutions.

*Annual Burden Hours:* 23 hours.

*Number of Respondents:* 91.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

*Frequency:* One time.

Respondents are food vendors requesting to operate a business on a military installation or solicited by an installation command or military unit through the Army and Air Force Exchange Service (AAFES), Navy Exchange (NEX), Marine Corps Exchange (MCX), Family Morale, Welfare and Recreation (FMWR), or other sponsoring entity to operate a food establishment on the military installation or Department of Defense site. If the form is not completed during the application process, the Preventive Medicine assessment can only be conducted once the operation is set up on the installation. A pre-operational inspection is conducted before the facility is authorized to initiate service to the installation. Critical food safety violation found during the pre-operational inspection results in disapproval for the facility to operate. All critical violations must be corrected in order to gain operational approval; the installation command incurs the risk of a foodborne illness outbreak if a non-compliant food establishment is authorized to operate. The vendor's application to operate is retained on file with Preventive Medicine and does not need to be resubmitted by vendors whose services are intermittent throughout the year unless the scope of the operation has changed.

Dated: November 22, 2013.

**Aaron Siegel,**

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

[FR Doc. 2013–28566 Filed 11–27–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2013–0040]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Navy 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 January 28, 2014.

**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 Headquarters Marine Corps, Attn: Dr. Tim Foresman, 3000 Marine Corps Pentagon, Room 2D153A, or call (703) 614–8348.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Camp Lejeune Notification Database; OMB Control Number 0703–0057.

*Needs and Uses:* The information collection requirement is used to obtain and maintain contact information of people who may have been exposed to contaminated drinking water in the past aboard Marine Corps Base Camp Lejeune, NC, as well as other persons interested in the issue. The information will be used to provide notifications and updated information as it becomes available. The information will also be used to correspond with registrants, as necessary (e.g. respond to voicemails or letters).

*Affected Public:* U.S. Service Members (active, reserve, retired, and separated), military dependents, Federal government employees, and civilian personnel who were/are stationed, live(d), or were/are employed aboard Marine Corps Base Camp Lejeune, NC, in 1987 or before and may have been exposed to contaminated drinking water. Additionally, any person interested in the Camp Lejeune historic drinking water issue may also request to have their contact information entered in the system.

*Annual Burden Hours:* 1,000.

*Number of Respondents:* 10,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 6 minutes.

*Frequency:* On occasion.

The Camp Lejeune Notification Registry contains contact information of people who may have been exposed to contaminated drinking water in the past aboard Marine Corps Base Camp Lejeune, NC, as well as other persons interested in the issue. The information will be used to provide notifications and updated information as it becomes available. The information will also be used to correspond with registrants, as necessary (e.g. respond to voicemails or letters).

Dated: November 22, 2013.

**Aaron Siegel,**

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

[FR Doc. 2013–28565 Filed 11–27–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; NIDDR DRRP–Community Living and Participation, Health and Function, and Employment of Individuals With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

### Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability and Rehabilitation Research

Projects (DRRPs)—Community Living and Participation, Health and Function, and Employment of Individuals with Disabilities Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Numbers: Community Living and Participation of Individuals with Disabilities: 84.133A–4 (Research) and 84.133A–9 (Development); Health and Function of Individuals with Disabilities: 84.133A–3 (Research) and 84.133A–8 (Development); and Employment of Individuals with Disabilities: 84.133A–1 (Research) and 84.133A–7 (Development).

**DATES:**

*Applications Available:* November 29, 2013.

*Date of Pre-Application Meeting:* December 20, 2013.

*Deadline for Notice of Intent to Apply:* January 3, 2014.

*Deadline for Transmittal of Applications:* January 28, 2014.

## Full Text of Announcement

## I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

*Disability and Rehabilitation Research Projects (DRRPs)*

The purpose of DRRPs, which are under NIDRR's Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. Additionally information on DRRPs can be found at: *http://www2.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

*Priorities:* There are four priorities for these competitions. Three priorities are from the notice of final priorities and definitions for this program, published in the **Federal Register** on May 7, 2013 (78 FR 26513). One priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472).

*Absolute Priorities:* For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

*Priority 1—DRRP on Community Living and Participation of Individuals with Disabilities.*

*Priority 2—DRRP on Health and Function of Individuals with Disabilities.*

*Priority 3—DRRP on Employment of Individuals with Disabilities.*

**Note:** The full text of these priorities is included in the notice of final priorities and definitions published in the **Federal Register** on May 7, 2013 (78 FR 26513) and in the application package for these competitions.

*Priority 4—General DRRP Requirements.*

**Note:** The full text of this priority is included in the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472) and in the application package for these competitions.

*Program Authority:* 29 U.S.C. 762(g) and 764(a).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program published in the **Federal Register** on April 28, 2006 (71 FR 25472). (e) The notice of final priorities and definitions for this program, published in the **Federal Register** on May 7, 2013 (78 FR 26513).

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $110,000,000 for the NIDRR program for FY 2014, of which we intend to use an estimated $3,000,000 for the DRRP competitions. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Estimated Range of Awards:* See chart.

*Estimated Average Size of Awards:* See chart.

*Maximum Award:* See chart.

*Estimated Number of Awards:* See chart.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* See chart.

| CFDA number and name | Applications available | Deadline for transmittal of applications | Estimated available funds | Estimated average size of awards | Estimated range of awards | Estimated number of awards | Maximum award amount (per year) [1, 2, 3] | Project period (months) |
|---|---|---|---|---|---|---|---|---|
| 84.133A–4 (Research) and 84.133A–9 (Development), Community Living and Participation of Individuals with Disabilities. | November 29, 2013. | January 28, 2014. | $1,000,000 | $490,000 | $480,000–$500,000 | 2 | $500,000 | 60 |

| CFDA number and name | Applications available | Deadline for transmittal of applications | Estimated available funds | Estimated average size of awards | Estimated range of awards | Estimated number of awards | Maximum award amount (per year) [1, 2, 3] | Project period (months) |
|---|---|---|---|---|---|---|---|---|
| 84.133A–3 (Research) and 84.133A–8 (Development), Health and Function of Individuals with Disabilities. | November 29, 2013. | January 28, 2014. | $1,000,000 | $490,000 | $480,000–$500,000 | 2 | $500,000 | 60 |
| 84.133A–1 (Research) and 84.133A–7 (Development), Employment of Individuals with Disabilities. | November 29, 2013. | January 28, 2014. | $1,000,000 | $490,000 | $480,000–-$500,000 | 2 | $500,000 | 60 |

[1] Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 and any subsequent year from the list of unfunded applicants from this competition.
[2] We will reject any application that proposes a budget exceeding the Maximum Amount. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.
[3] The maximum amount includes both direct and indirect costs.

## III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

3. *Other:* Different selection criteria are used for DRRP research grants and development grants. Applicants under each priority must clearly indicate in the application whether they are applying for a research grant (84.133A–4, 84.133A–3, or 84.133A–1) or a development grant (84.133A–9, 84.133A–8, or 84.133A–7) and must address the selection criteria relevant to that grant type. Without exception, NIDRR will review each application based on the grant designation made by the applicant. Applications will be determined ineligible and will not be reviewed if they do not include a clear designation as a research grant or a development grant.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify these competitions as follows: CFDA numbers 84.133A–4 & 84.133A–9; 84.133A–3 & 84.133A–8; or 84.133A–1 & 84.133A–7.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: Due to the open nature of the DRRP priorities announced here, and to assist with the selection of reviewers for this competition, NIDRR is requesting all potential applicants to submit a letter of intent (LOI). The submission is not mandatory and the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, the name of the applicant, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of a LOI is not a prerequisite for eligibility to submit an application.

NIDRR will accept the optional LOI via surface mail or email, by January 3, 2014. The LOI must be sent to: Marlene Spencer, U.S. Department of Education, 550 12th Street, SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202; or by email to: *marlene.spencer@ed.gov.*

For further information regarding the LOI submission process, contact Marlene Spencer at (202) 245–7532.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 CFR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. Submission Dates and Times:

*Applications Available:* November 29, 2013.

*Date of Pre-Application Meeting:* Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on December 20, 2013. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Deadline for Notice of Intent to Apply:* January 3, 2014.

*Deadline for Transmittal of Applications:* January 28, 2014.

Applications for grants under these competitions must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

**Note:** Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under the program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Community Living and Participation, Health and Function, and Employment of Individuals with Disabilities DRRP program, CFDA Numbers 84.133A–4 (Research) and 84.133–9 (Development); 84.133A–3 (Research) and 84.133A–8 (Development); 84.133A–1 (Research) and 84.133A–7 (Development), must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Community Living and Participation, Health and Function, and Employment of Individuals with Disabilities DRRP program at *www.Grants.gov.* You must search for

the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the

application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–4 (Research) or 84.133A–9 (Development); 84.133A–3 (Research) or 84.133A–8 (Development); 84.133A–1 (Research) or 84.133A–7 (Development)), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–4 (Research) or 84.133A–9 (Development); 84.133A–3 (Research) or 84.133A–8 (Development); 84.133A–1 (Research) or 84.133A–7 (Development)), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 25, 2013.

**Michael K. Yudin,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2013–28669 Filed 11–27–13; 8:45 am]

**BILLING CODE 4000–01–P**

---

## DEPARTMENT OF EDUCATION

## National Assessment Governing Board; Meeting

**AGENCY:** National Assessment Governing Board, U.S. Department of Education.

**ACTION:** Notice of open and closed meeting sessions.

**SUMMARY:** This notice sets forth the schedule and proposed agenda for the upcoming meeting of the National Assessment Governing Board (Board) and also describes the specific functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This notice is issued to provide members of the general public with an opportunity to attend and/or provide comments. Individuals who will need special accommodations in order to attend the meeting (e.g. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than November 29, 2013. We will attempt to meet requests after this date but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

**DATES:** December 5–December 7, 2013.

### Times

*December 5: Committee Meetings*

Executive Committee: Open Session: 4:30 p.m.–5:30 p.m.

*December 6: Full Board and Committee Meetings*

Full Board: Open Session: 8:30 a.m.–4:30 p.m.; Administrative Session: 4:30 p.m.–5:00 p.m.

*Committee Meetings*

Reporting and Dissemination Committee (R&D): Open Session: 10:00 a.m.–12:45 p.m.

Assessment Development Committee (ADC): Open Session: 10:00 a.m.–12:45 p.m.

Committee on Standards, Design and Methodology (COSDAM): Open Session: 10:00 a.m.–11:05 a.m.; Closed Session: 11:05 a.m.–11:45 p.m.; Open session: 11:45 p.m.–12:45 p.m.

*December 7: Full Board and Committee Meetings*

Nominations Committee: Closed Session: 7:30 a.m.–8:15 a.m.

Full Board: Closed Session: 8:30 a.m.–9:15 a.m.; Open Session: 9:30 a.m.–12:00 p.m.

*Location*

The Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Munira Mwalimu, Executive Officer, National Assessment Governing Board, 800 North Capitol Street NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board (Board) is established under section 302 of the National Assessment of Educational Progress Authorization Act.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On December 5, 2013, the Board's Executive Committee will convene in open session from 4:30 p.m. to 5:30 p.m.

On December 6, 2013, the full Board will meet in open session from 8:30 a.m. to 9:45 a.m., recess for Committee meetings from 10:00 a.m. to 12:45 p.m. and reconvene in open session from 1:00 p.m. to 4:30 p.m. From 4:30 p.m. to 5:00 p.m. there will be an administrative session in which the Board will receive OGC ethics training.

On December 6, 2013 from 8:30 a.m. to 9:45 a.m., the Board will review and approve the December 6–7, 2013 Board meeting agenda and meeting minutes from the August 2–3, 2013 Quarterly Board meeting. Thereafter, the Chairman will open the meeting and introduce new Board Member, Lucille Davy. The Oath of Office will be administered to four reappointed Board members and new member Lucille Davy, following which members will provide remarks.

This session will be followed by a report from the Executive Director of the

Governing Board, and updates from the Commissioner of the National Center for Education Statistics (NCES) and the Director of the Institute of Education Sciences (IES). Thereafter, the Board will recess for Committee meetings from 10:00 a.m. to 12:45 p.m.

The Reporting and Dissemination Committee and the Assessment Development Committee will meet in open session from 10:00 a.m. to 12:45 p.m. The Committee on Standards, Design and Methodology (COSDAM) will meet in open session from 10:00 a.m. to 11:05 a.m., in closed session from 11:05 a.m. to 11:45 a.m., and thereafter in open session from 11:45 a.m. to 12:45 p.m.

During the closed session, COSDAM members will receive a briefing on statistical analyses of results from the 2013 NAEP Technology and Engineering Literacy (TEL) pilot assessment at grade 8. These data have not been released and therefore cannot be disclosed to the general public at this time. Premature disclosure of these secure data would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Following the Committee sessions, the full Board will convene from 1:00 p.m. to 1:45 p.m. to receive a briefing on using NAEP Data for Key Education Indicators. After this briefing from 2:00 p.m. to 3:00 p.m. the Board will welcome the Executive Director of the Council of Chief State School Officers (CCSSO) who will provide remarks. Thereafter the Governing Board/CCSSO Task Force will provide its annual briefing to the Board.

From 3:00 p.m. to 4:15 p.m. the Board will have a panel presentation on Assessing Learning and Innovation Skills. The Board's annual ethics briefing will be conducted in administrative session by the Office of General Counsel from 4:30 p.m. to 5:00 p.m. The December 6, 2013 Board meeting is scheduled to adjourn at 5:00 p.m.

On December 7, 2013, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. to review nominees for five open positions, for terms beginning in October 2014. The positions are chief state school officer, 4th grade teacher, 8th grade teacher, secondary school principal, and general public representative. The Committee's discussions on Board nominations pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 of the United States Code.

On December 7, 2013, from 8:30 a.m. to 9:15 a.m. the full Board will receive a closed session briefing and will discuss the 2013 Reading and Mathematics Report Cards for the Trial Urban District Assessment (TUDA). The Board will receive an embargoed briefing on preliminary results which will include secure test items, embargoed assessment data, and results that cannot be discussed in an open meeting prior to their official approval and release. Premature disclosure of these results would significantly impede implementation of the NAEP assessment program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 United States Code.

Following this briefing, the Board will meet in open session to receive an interactive Inside NAEP briefing from NAEP staff on new computer based reporting for 2013. The Board is scheduled to receive reports from the standing Committees and take action on Committee recommendations from 10:45 a.m. to 12:00 p.m. The December 7, 2013 meeting is scheduled to adjourn at 12:00 p.m.

A verbatim transcript of the meeting, consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street NW., Washington, DC, from 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1800; or in the Washington, DC, area at (202) 512–0000. **Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

**Cornelia S. Orr,**

*Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.*

[FR Doc. 2013–28555 Filed 11–27–13; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; Computer Matching Program between the U.S. Department of Education (ED) and the U.S. Department of Veterans Affairs (VA)

**AGENCY:** Department of Education.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the renewal of the computer matching program between the U.S. Department of Education (ED) (recipient agency) and the U.S. Department of Veterans Affairs (VA) (source agency). After the ED and VA Data Integrity Boards approve a new computer matching agreement (CMA), the computer matching program will begin on the effective date as specified in the CMA and as indicated in paragraph 5 of this notice.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), the Office of Management and Budget (OMB) *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988,* 54 FR 25818 (June 19, 1989), and OMB Circular No. A–130, Appendix I, the following information is provided:

1. *Names of Participating Agencies.*

The U.S. Department of Education (ED) and the U.S. Department of Veterans Affairs (VA).

2. *Purpose of the Match.*

The purpose of this matching program between ED and VA is to assist the Secretary of Education with verification of a veteran's status during the review of applications for financial assistance under title IV of the Higher Education Act of 1965, as amended, (HEA).

The Secretary of Education is authorized by the HEA to administer the title IV programs and to enforce the terms and conditions of the HEA.

Section 480(c)(1) of the HEA defines the term ''veteran'' to mean ''any individual who (A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and (B) was released under a condition other than dishonorable.'' (20 U.S.C. 1087vv(c)(1)). Under section 480(d)(1)(D) of the HEA, an applicant who is a veteran (as defined in section

480(c)(1)) is considered an independent student for purposes of title IV, HEA program assistance eligibility, and therefore does not have to provide parental income and asset information to apply for title IV, HEA program assistance. (20 U.S.C. 1087vv(d)(1)(D)).

3. *Authority for Conducting the Matching Program.*

ED is authorized to participate in the matching program under sections 480(c)(1) and 480(d)(1)(D) of the HEA (20 U.S.C. 1087vv(c)(1) and (d)(1)(D)). VA is authorized to participate in the matching program under 38 U.S.C. 523.

4. *Categories of Records and Individuals Covered by the Match.*

ED will provide the Social Security number and other identifying information of each applicant for financial assistance under title IV of the HEA who indicates veteran status. This information will be disclosed from the Federal Student Aid Application File system of records (18–11–01), which was most recently published in the **Federal Register** on August 3, 2011 (74 FR 46774–46781). ED will disclose this information to VA under routine use 14 of the system of records (18–11–01). ED data will be matched against data in the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA21) system of records, under routine use 21, as added to that system of records (38VA21) by a notice published in the **Federal Register** on June 4, 2001 (66 FR 30049–30050).

5. *Effective Dates of the Matching Program.*

The matching program will be effective on the latest of the following three dates: (A) December 30, 2013; (B) 30 days from the date ED publishes a Computer Matching Notice in the **Federal Register** as required by 5 U.S.C. 552a(e)(12); or, (C) 40 days from the date that ED transmits the report of the matching program, as required by 5 U.S.C. 552a(r), to OMB, the U.S. House Committee on Oversight and Government Reform, and the U.S. Senate Committee on Homeland Security and Governmental Affairs, unless OMB waives 10 or fewer days of the 40-day review period for compelling reasons, in which case 30 days plus whatever number of days that OMB did not waive from the date of ED's transmittal of the matching program report.

6. *Address for Receipt of Public Comments or Inquiries.*

Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the CMA between ED and VA, should contact Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE., Washington, DC 20202. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 18, 2013.

**James W. Runcie,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. 2013–28622 Filed 11–27–13; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### National Coal Council

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, Section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the National Coal Council (NCC) will be renewed for a two-year period.

The Committee will continue to provide advice and recommendations to the Secretary of Energy on general policy matters relating to coal issues.

Additionally, the renewal of the National Coal Council has been determined to be essential to conduct business of the Department of Energy and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Wright at (202) 586–0429.

Issued in Washington, DC on November 22, 2013.

**Carol A. Matthews,**

*Committee Management Officer.*

[FR Doc. 2013–28683 Filed 11–27–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13701–002]**

### Free Flow Power Missouri 2, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major.

b. *Project No.:* P–13701–002.

c. *Date filed:* November 13, 2013.

d. *Applicant:* Free Flow Power Missouri 2, LLC.

e. *Name of Project:* Sardis Lake Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) existing Sardis Lake Dam, on the Little Tallahatchie River, near the Town of Sardis, Panola County, Mississippi. The proposed project would occupy approximately 59 acres of federal lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Feldman, Vice President of Project Development, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114, (978) 283–2822.

i. *FERC Contact:* Patti Leppert, (202) 502–6034, *patricia.leppert@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the

instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to 18 CFR section 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: January 13, 2014.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. 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. The first page of any filing should include docket number P–13701–002.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing Corps' Sardis Lake Dam and Reservoir, and would consist of the following new facilities: (1) A steel liner installed within the existing concrete outlet tunnel; (2) a steel-lined, reinforced concrete bifurcation at the end of the existing conduit dividing flows between the existing stilling basin and the powerhouse; (3) a 15.5-foot-diameter, 250-foot-long steel penstock; (4) a powerhouse with two generating units having a total installed capacity of 14.6 megawatts; (5) a 200-foot-long tailrace channel; (6) a 6,210-foot-long transmission line; and (7) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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.

p. With this notice, we are initiating consultation with the Mississippi State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance—March 2014.

Issue Scoping Document 1 for comments—April 2014.

Comments on Scoping Document 1—May 2014.

Issue Scoping Document 2 (if necessary)—July 2014.

Issue notice of ready for environmental analysis—July 2014.

Commission issues EA or draft EA—January 2015.

Comments on EA or draft EA—February 2015.

Commission issues final EA (if necessary) April 2015.

Dated: November 21, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28541 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13702–002]**

### Free Flow Power Missouri 2, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major.

b. *Project No.:* P–13702–002.

c. *Date filed:* November 13, 2013.

d. *Applicant:* Free Flow Power Missouri 2, LLC.

e. *Name of Project:* Grenada Lake Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) existing Grenada Lake Dam, on the Yalobusha River, near the Town of Grenada, Grenada County, Mississippi. The proposed project would occupy approximately 35.5 acres of federal lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Thomas Feldman, Vice President of Project Development, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114, (978) 283–2822.

i. *FERC Contact:* Patti Leppert, (202) 502–6034, *patricia.leppert@ferc.gov.*

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 13, 2014.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* 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. The first page of any filing should include docket number P–13702–002.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing Corps' Grenada Lake Dam and Reservoir, and would consist of the following new facilities: (1) A steel liner installed within the existing concrete outlet tunnel; (2) a steel-lined,

reinforced concrete bifurcation at the end of the existing conduit dividing flows between the existing stilling basin and the powerhouse; (3) a 14-foot-diameter, 260-foot-long penstock; (4) a powerhouse with two generating units having a total installed capacity of 9 megawatts; (5) a 150-foot-long tailrace channel; (6) a 1,980-foot-long transmission line; and (7) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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.

p. With this notice, we are initiating consultation with the Mississippi State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance—March 2014.

Issue Scoping Document 1 for comments—April 2014.

Comments on Scoping Document 1—May 2014.

Issue Scoping Document 2 (if necessary)—July 2014.

Issue notice of ready for environmental analysis—July 2014.

Commission issues EA or draft EA—January 2015.

Comments on EA or draft EA—February 2015.

Commission issues final EA (if necessary)—April 2015.

Dated: November 21, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28542 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13703–002]**

### Free Flow Power Missouri 2, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major.

b. *Project No.:* P–13703–002.

c. *Date filed:* November 13, 2013.

d. *Applicant:* Free Flow Power Missouri 2, LLC.

e. *Name of Project:* Enid Lake Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) existing Enid Lake Dam, on the Yocona River, near the Town of Enid, Yalobusha County, Mississippi. The proposed project would occupy approximately 30 acres of federal lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Feldman, Vice President of Project Development, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114, (978) 283–2822.

i. *FERC Contact:* Patti Leppert, (202) 502–6034, *patricia.leppert@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to 18 CFR section 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 13, 2014.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. 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. The first page of any filing should include docket number P–13703–002.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing Corps' Enid Lake Dam and Reservoir, and would consist of the following new facilities: (1) A steel liner installed within the existing concrete outlet tunnel; (2) a steel-lined, reinforced concrete bifurcation at the end of the existing conduit dividing flows between the existing stilling basin and the powerhouse; (3) a 10-foot-diameter, 240-foot-long penstock; (4) a powerhouse with two generating units having a total installed capacity of 4.6 megawatts; (5) a 150-foot-long tailrace channel; (6) a 2,036-foot-long transmission line; and (7) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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.

p. With this notice, we are initiating consultation with the Mississippi State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance—March 2014.

Issue Scoping Document 1 for comments—April 2014.

Comments on Scoping Document 1—May 2014.

Issue Scoping Document 2 (if necessary)—July 2014.

Issue notice of ready for environmental analysis—July 2014.

Commission issues EA or draft EA—January 2015.

Comments on EA or draft EA—February 2015.

Commission issues final EA (if necessary)—April 2015.

Dated: November 21, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28543 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2210–238]**

### Appalachian Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, and Recommendations

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission (Commission) and is available for public inspection:

a. *Application Type:* Application for non-project use of project lands and waters to increase water withdrawal and construct facilities.

b. *Project No:* 2210–238.

c. *Date Filed:* October 10, 2013.

d. *Applicant:* Appalachian Power Company (licensee).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The Smith Mountain Project is located on the Roanoke River in Bedford, Campbell, Franklin, and Pittsylvania Counties, Virginia. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Frank M. Simms, Hydro Supervisor—Plant Manager II, Appalachian Power Company, 40 Franklin Road, Roanoke, VA 24011. Phone 540–985–2875.

i. *FERC Contact:* Rachel Price at 202–502–8907, *rachel.price@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, protests, and recommendations:* December 19, 2013. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations 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. Please include the project number (P–2210–238) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* Appalachian Power Company, licensee for the Smith Mountain Pumped Storage Project, requests an amendment of the Order Approving Non-Project Use of Project Lands and Waters—Water Withdrawal Increase issued October 10, 2008. The amendment would allow the Bedford Regional Water Authority to increase its current water withdrawal from 2.999 million gallons per day (MGD) to maximum daily rate of 12 MGD. The licensee is requesting the Commission grant it non-project use of project lands and waters for the Bedford Regional Water Authority to construct and operate permanent water withdrawal facilities within the project boundary.

l. *Locations of the Application:* The application may be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above and in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

m. Individuals who would like to be electronically notified of issuances and filings related to this application should eSubscribe to docket P–2210 at *http://www.ferc.gov/docs-filing/esubscription.asp*. In lieu of eSubscription, individuals can be added to the Commission's mailing list by writing to the Secretary.

n. *Comments, Motions To Intervene, Protests, and Recommendations:* Anyone may submit comments, motion to intervene, protests, or recommendations in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all comments, protests, or recommendations filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, protests, or recommendations must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', ''RECOMMENDATIONS'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests, recommendations, or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. 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.

Dated: November 20, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28546 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13704–002]**

### Free Flow Power Missouri 2, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major.

b. *Project No.:* P–13704–002.

c. *Date Filed:* November 13, 2013.

d. *Applicant:* Free Flow Power Missouri 2, LLC.

e. *Name of Project:* Arkabutla Lake Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) existing Arkabutla Lake Dam, on the Coldwater River, near the Town of Hernando, Tate and DeSoto Counties, Mississippi. The proposed project would occupy approximately 48.2 acres of federal lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Thomas Feldman, Vice President of Project Development, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114, (978) 283–2822.

i. *FERC Contact:* Patti Leppert, (202) 502–6034, *patricia.leppert@ferc.gov.*

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to 18 CFR section 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 13, 2014.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* 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. The first page of any filing should include docket number P–13704–002.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing Corps' Arkabutla Lake Dam and Reservoir, and would consist of the following new facilities: (1) A steel liner installed within the existing concrete outlet tunnel; (2) a steel-lined, reinforced concrete bifurcation at the end of the existing conduit dividing flows between the existing stilling basin and the powerhouse; (3) a 12-foot-diameter, 272-foot-long penstock; (4) a powerhouse with two generating units having a total installed capacity of 5.1 megawatts; (5) a 200-foot-long tailrace channel; (6) a 2,712-foot-long transmission line; and (7) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

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.

p. With this notice, we are initiating consultation with the Mississippi State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance—March 2014.

Issue Scoping Document 1 for comments—April 2014.

Comments on Scoping Document 1—May 2014.

Issue Scoping Document 2 (if necessary)—July 2014.

Issue notice of ready for environmental analysis—July 2014.

Commission issues EA or draft EA—January 2015.

Comments on EA or draft EA—February 2015.

Commission issues final EA (if necessary)—April 2015.

Dated: November 21, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28544 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP14–191–000.

*Applicants:* Enable Gas Transmission, LLC.

*Description:* Annual Sligo Lease LUFG Percentage Tracker Tariff Filing of Enable Gas Transmission, LLC.

*Filed Date:* 11/20/13.

*Accession Number:* 20131120–5041.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–192–000.

*Applicants:* Dominion Transmission, Inc.

*Description:* DTI—November 20, 2013 Volume 1A Changes to be effective 12/20/2013.

*Filed Date:* 11/20/13.

*Accession Number:* 20131120–5051.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–193–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Castleton—Negotiated Rate Filing to be effective 11/21/2013.

*Filed Date:* 11/20/13.

*Accession Number:* 20131120–5106.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–194–000.

*Applicants:* WBI Energy Transmission, Inc.

*Description:* WBI Energy Transmission, Inc. submits tariff filing per 154.204: 2013 Revised Non-

conforming Negotiated Rate SA of Tharaldson Ethanol to be effective 11/14/2013.

*Filed Date:* 11/20/13.

*Accession Number:* 20131120–5109.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–195–000.

*Applicants:* Great Lakes Gas Transmission Limited Par.

*Description:* Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.204: RP13–1367–000 Tariff Compliance Filing to be effective 11/1/2013.

*Filed Date:* 11/20/13.

*Accession Number:* 20131120–5126.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–196–000.

*Applicants:* Questar Pipeline Company.

*Description:* Questar Pipeline Company submits tariff filing per 154.204: Questar Pipeline Company FGRP Filing for 2014 to be effective 1/1/2014.

*Filed Date:* 11/20/13.

*Accession Number:* 20131120–5128.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–197–000.

*Applicants:* Viking Gas Transmission Company.

*Description:* Viking Gas Transmission Company submits tariff filing per 154.204: Non-Conforming Agreement Wisconsin Gas, LLC to be effective 12/19/2013.

*Filed Date:* 11/20/13.

*Accession Number:* 20131120–5149.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–198–000.

*Applicants:* Equitrans, L.P.

*Description:* Notice Regarding Non-Jurisdictional Gathering Facilities of Equitrans, L.P.

*Filed Date:* 11/20/13.

*Accession Number:* 20131120–5157.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–199–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 11/21/13 Negotiated Rates—JP Morgan Ventures (RTS)—6025–26 to be effective 11/21/2013.

*Filed Date:* 11/21/13.

*Accession Number:* 20131121–5050.

*Comments Due:* 5 p.m. ET 12/3/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 21, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–28627 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR14–7–000.

*Applicants:* Lee 8 Storage Partnership.

*Description:* Tariff filing per 284.123(b)(2) +: Rate Change Filing to be effective 11/14/2013.

*Filed Date:* 10/14/13.

*Accession Number:* 20131114–5110.

*Comments Due:* 5 p.m. ET 12/5/13.

*284.123(g) Protests Due:* 5 p.m. ET 1/13/14.

*Docket Numbers:* CP14–20–000.

*Applicants:* Transcontinental Gas Pipeline Company, LLC.

*Description:* Application of Transcontinental Gas Pipe Line Company, LLC to abandon service under Rate Schedule FT provided to Delmarva Power & Light Company.

*Filed Date:* 11/13/13.

*Accession Number:* 20131113–5093.

*Comments Due:* 5 p.m. ET 11/25/13.

*Docket Numbers:* RP14–165–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Negotiated Rate—Village of Bethany to be effective 12/1/2013.

*Filed Date:* 11/14/13.

*Accession Number:* 20131114–5074.

*Comments Due:* 5 p.m. ET 11/26/13.

*Docket Numbers:* RP14–166–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Cities of Pickneyville and Salem—Negotiated Rate to be effective 12/1/2013.

*Filed Date:* 11/14/13.

*Accession Number:* 20131114–5075.

*Comments Due:* 5 p.m. ET 11/26/13.

*Docket Numbers:* RP14–167–000.

*Applicants:* Horizon Pipeline Company, L.L.C.

*Description:* Negotiated Rate—Nicor to be effective 11/13/2013.

*Filed Date:* 11/14/13.

*Accession Number:* 20131114–5076.

*Comments Due:* 5 p.m. ET 11/26/13.

*Docket Numbers:* RP14–168–000.

*Applicants:* Eastern Shore Natural Gas Company.

*Description:* Incorporation by Reference of Storage Rates to be effective 12/14/2013.

*Filed Date:* 11/14/13.

*Accession Number:* 20131114–5095.

*Comments Due:* 5 p.m. ET 11/26/13.

*Docket Numbers:* RP14–170–000.

*Applicants:* Gulf Crossing Pipeline Company LLC.

*Description:* Panda Non-conforming Agmts filing to be effective 12/15/2013.

*Filed Date:* 11/15/13.

*Accession Number:* 20131115–5023.

*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–171–000.

*Applicants:* Gulf Crossing Pipeline Company LLC.

*Description:* Zero Fuel Transaction Exemption Filing (eff 12–15–13) to be effective 12/15/2013.

*Filed Date:* 11/15/13.

*Accession Number:* 20131115–5024.

*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–172–000.

*Applicants:* Southern Natural Gas Company, L.L.C.

*Description:* Operational Transactions Report of Southern Natural Gas Company, L.L.C.

*Filed Date:* 11/15/13.

*Accession Number:* 20131115–5039.

*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–173–000.

*Applicants:* Discovery Gas Transmission LLC.

*Description:* 2014 HMRE Filing to be effective 1/1/2014.

*Filed Date:* 11/15/13.

*Accession Number:* 20131115–5080.

*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–174–000.

*Applicants:* Algonquin Gas Transmission, LLC.

*Description:* Modification to Posting Deadline to be effective 12/15/2013.

*Filed Date:* 11/15/13.

*Accession Number:* 20131115–5115.

*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–175–000.

*Applicants:* East Tennessee Natural Gas, LLC.

*Description:* Modification to Posting Deadline to be effective 12/15/2013.

*Filed Date:* 11/15/13.

*Accession Number:* 20131115–5124.
*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–176–000.
*Applicants:* Saltville Gas Storage Company L.L.C.
*Description:* Modification to Posting Deadline to be effective 12/15/2013.
*Filed Date:* 11/15/13.
*Accession Number:* 20131115–5130.
*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–177–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* Modification to Posting Deadline to be effective 12/15/2013.
*Filed Date:* 11/15/13.
*Accession Number:* 20131115–5147.
*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–178–000.
*Applicants:* Southeast Supply Header, LLC.
*Description:* Modification to Posting Deadline to be effective 12/15/2013.
*Filed Date:* 11/15/13.
*Accession Number:* 20131115–5159.
*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–179–000.
*Applicants:* Midcontinent Express Pipeline LLC.
*Description:* Compliance Filing in Docket No. RP13–1080 to be effective 12/15/2013.
*Filed Date:* 11/15/13.
*Accession Number:* 20131115–4007.
*Comments Due:* 5 p.m. ET 11/27/13.

*Docket Numbers:* RP14–180–000.
*Applicants:* Gas Transmission Northwest LLC.
*Description:* Medford E–2 Rate Removal to be effective 12/19/2013.
*Filed Date:* 11/18/13.
*Accession Number:* 20131118–5023.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–181–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Negotiated Rate—Perryville FTS and FTS–G to be effective 12/1/2013.
*Filed Date:* 11/18/13.
*Accession Number:* 20131118–5144.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–182–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate—Town of Corning, IL to be effective 12/1/2013.
*Filed Date:* 11/18/13.
*Accession Number:* 20131118–5195.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–183–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate—City of Sullivan to be effective 12/1/2013.
*Filed Date:* 11/18/13.
*Accession Number:* 20131118–5196.
*Comments Due:* 5 p.m. ET 12/2/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 19, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–28630 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP14–184–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Renaissance Neg Rate to be effective 11/20/2013.
*Filed Date:* 11/19/13.
*Accession Number:* 20131119–5113.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–185–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Tenaska Negotiated Rate to be effective 11/20/2013.
*Filed Date:* 11/19/13.
*Accession Number:* 20131119–5117.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–186–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: NJR Negotiated Rate Filing to be effective 11/21/2013.
*Filed Date:* 11/19/13.
*Accession Number:* 20131119–5118.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–187–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate—NJR Energy to be effective 11/21/2013.
*Filed Date:* 11/19/13.
*Accession Number:* 20131119–5120.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–188–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate for Tenaska to be effective 11/20/2013.
*Filed Date:* 11/19/13.
*Accession Number:* 20131119–5122.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–189–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate—Tenaska Gas Storage to be effective 11/20/2013.
*Filed Date:* 11/19/13.
*Accession Number:* 20131119–5123.
*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–190–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate—Macquarie to be effective 11/21/2013.
*Filed Date:* 11/19/13.
*Accession Number:* 20131119–5125.
*Comments Due:* 5 p.m. ET 12/2/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP14–175–001.
*Applicants:* East Tennessee Natural Gas, LLC.
*Description:* East Tennessee Natural Gas, LLC submits tariff filing per 154.205(b): Errata to Modification of

Posting Deadline to be effective 12/20/2013.

*Filed Date:* 11/19/13.

*Accession Number:* 20131119–5114.

*Comments Due:* 5 p.m. ET 12/2/13.

*Docket Numbers:* RP14–176–001.

*Applicants:* Saltville Gas Storage Company L.L.C.

*Description:* Saltville Gas Storage Company L.L.C. submits tariff filing per 154.205(b): Errata to Modification of Posting Deadline to be effective 12/20/2013.

*Filed Date:* 11/19/13.

*Accession Number:* 20131119–5121.

*Comments Due:* 5 p.m. ET 12/2/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 20, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–28631 Filed 11–27–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13124–005]**

### Copper Valley Electric Association, Inc.; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 **Federal Register** 47897), the Office of Energy Projects has reviewed Copper Valley Electric Association, Inc.'s application to amend its license for the Allison Creek Hydroelectric Project (FERC Project No. 13124). The 6.5-megawatt project is located on Allison Creek near Valdez, Alaska. The project does not occupy any federal lands.

As licensed, the majority of the project's 7,000-foot-long penstock would be installed above-ground and a 4,000-foot-long temporary construction access road would be used during construction. In its amendment application, the licensee proposes to bury the entire penstock instead, including the drilling and blasting of a 700-foot-long, 16-foot-diameter tunnel through which a segment of the penstock would be routed. In addition, the licensee proposes changes to the construction access roads. Staff prepared an environmental assessment (EA) which analyzes the potential environmental effects of the proposed amendment, and concludes that amending the license, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA may be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13124) in the docket number field to access the document. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

Dated: November 20, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28547 Filed 11–27–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP14–18–000]**

### Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Woodbridge Delivery Lateral Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Woodbridge Delivery Lateral Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Middlesex County, New Jersey. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on December 23, 2013.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Transco provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

#### Summary of the Proposed Project

Transco proposes to construct and operate approximately 2.4 miles of 20-inch-diameter natural gas lateral pipeline in Middlesex County, New Jersey. In addition, a new meter station and other appurtenant facilities are proposed at the terminus of the project. The Woodbridge Delivery Lateral Project would provide 264,000 dekatherms per day of natural gas per day to the Woodbridge Energy Center, a new gas fired electric generating station.

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of

Continued

**Land Requirements for Construction**

Construction of the proposed facilities would disturb about 40 acres of land for the aboveground facilities and the pipeline. Following construction, Transco would maintain about 9.4 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Consultations Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before December 23, 2013.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP14–18–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove

appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

your name from the mailing list, please return the attached Information Request (appendix 2).

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP14–18–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: November 22, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28718 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR14–9–000]**

### Shell Pipeline Company LP; Notice of Petition for Declaratory Order

Take notice that on November 14, 2013, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2013), Shell Pipeline Company LP (SPLC) filed a petition requesting a declaratory order approving SPLC's proposed contract rates and proposed service priority rights and prorationing provisions for shippers that have executed Transportation Service Agreements in accordance with the terms of the recently concluded binding open season, for SPLC's proposed transportation service from Nederland and Port Neches, TX to St. James and Clovelly, LA, and any other additional further receipt or delivery points, as explained more fully in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. 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. 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 FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern time on December 16, 2013.

Dated: November 20, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28545 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14521–001, 14561–000]**

### KC Small Hydro LLC; Advanced Hydropower, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 13, 2013, KC Scoby LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), and on October 30, 2013 filed for amendment of the application, changing the applicant to KC Small Hydro LLC. (KCS Hydro). On November 5, 2013, Advanced Hydropower, Inc. (Advanced Hydro) filed a competing application for a preliminary permit. Both applicants propose to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) Falls Lake Dam on the Neuse River near the town of Raleigh in Wake County, North Carolina. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

KCS Hydro's proposed project would consist of the following: (1) Two turbine/generator units, with a total capacity of 1,700 kilowatts (kW), installed within the existing intake tower; (2) an electrical control booth constructed on top of the intake tower; and (3) a 700-foot-long, 13.2 kilo-Volt (kV) underground transmission line. The proposed project would have an average annual generation of 5,000 megawatt-hours (MWh), and operate as directed by the Corps.

*Applicant Contact:* Ms. Kelly Sackheim, KC Small Hydro LLC, 5096 Cocoa Palm Way, Fair Oaks, CA 95628. (310) 401–5978.

Advanced Hydro's proposed project consists of two alternatives:

Alternative One: (1) A 17.4-foot-diameter extension of the existing outlet conduit; (2) a double wye connection with trashracks and butter-fly valves to route flow; (3) a powerhouse containing two generating units with a total capacity of 3,320 kW; (4) the existing stilling basin at the end of the outlet conduit would be enlarged; (5) a substation; and (6) a 180-foot-long, 13.2 kV transmission line. The proposed project would have an average annual generation of 9,800 megawatt-hours, and operate as directed by the Corps.

Alternative two: (1) A new intake structure with trashracks located in the reservoir to the south of the dam; (2) a 500-foot-long, 10-foot-diameter penstock; (3) a powerhouse containing two generating units with a total capacity of 3,320 kW; (4) the existing stilling basin at the end of the outlet conduit would be enlarged; (5) a substation; and (6) a 180-foot-long, 13.2 kV transmission line. The proposed project would have an average annual generation of 9,800 megawatt-hours, and operate as directed by the Corps.

*Applicant Contact:* Mr. Colin M. Gaines, Advanced Hydropower, Inc., 3774 Chessa Lane, Clovis, CA 93619. (772) 321–6243.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14521 or P–14561) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28719 Filed 11–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13214–003—Kentucky Ravenna Hydroelectric Project]**

### Lock 12 Hydro Partners, LLC; Notice of Proposed Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Kentucky State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the proposed Ravenna Hydroelectric Project.

The Programmatic Agreement, when executed by the Commission, the Kentucky SHPO, and the Advisory Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR section 800.13 (e)). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below.

Lock 12 Hydro Partners, LLC, as the applicant for Project No. 13214–003, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 13214–003 as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue NW., Washington, DC 20004.

Jill Howe, Kentucky Heritage Council, 300 Washington St., Frankfurt, KY 40601.

Philip Mink, Kentucky Heritage Council, 300 Washington St., Frankfurt, KY 40601.

Jerry Graves, Kentucky River Authority, 627 Wilkinson Blvd., Frankfort, KY 40601.

David Hamilton, Kentucky River Authority, 627 Wilkinson Blvd., Frankfort, KY 40601.

Lisa LaRue-Baker, United Keetoowah Band of Cherokee Indians, P.O. Box 746, Tahlequah, OK 74465.

Michael Striker, Gray & Pape, Inc., 1318 Main St., Cincinnati, OH 45202.

David Brown Kinloch, Lock 14 Hydro Partners, 414 South Wenzel St., Louisville, KY 40204.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original plus five copies of any such motion must be filed with the Secretary of the Commission (888 First Street NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Dated: November 21, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28540 Filed 11–27–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13213–003—Kentucky Heidelberg Hydroelectric Project]**

### Lock 14 Hydro Partners, LLC; Notice of Proposed Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Kentucky State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the proposed Heidelberg Hydroelectric Project.

The Programmatic Agreement, when executed by the Commission, the Kentucky SHPO, and the Advisory Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR section 800.13 (e)). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below.

Lock 14 Hydro Partners, LLC, as the applicant for Project No. 13213–003, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 13213–003 as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue NW., Washington, DC 20004.

Jill Howe, Kentucky Heritage Council, 300 Washington St., Frankfurt, KY 40601.

Philip Mink, Kentucky Heritage Council, 300 Washington St., Frankfurt, KY 40601.

Jerry Graves, Kentucky River Authority, 627 Wilkinson Blvd., Frankfort, KY 40601.

David Hamilton, Kentucky River Authority, 627 Wilkinson Blvd., Frankfort, KY 40601.

Lisa LaRue-Baker, United Keetoowah Band of Cherokee Indians, P.O. Box 746, Tahlequah, OK 74465.

Michael Striker, Gray & Pape, Inc., 1318 Main St., Cincinnati, OH 45202.

David Brown Kinloch, Lock 14 Hydro Partners, 414 South Wenzel St., Louisville, KY 40204.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original plus five copies of any such motion must be filed with the Secretary of the Commission (888 First Street NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Dated: November 21, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–28539 Filed 11–27–13; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9902–83]**

### Agency Information Collection Activities; Proposed Renewal of Several Currently Approved Collections; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit requests to renew several currently approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICRs are identified in this document by their corresponding titles, EPA ICR numbers, OMB Control numbers, and related docket identification (ID) numbers. Before submitting these ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collection activities that are summarized in this document. The ICRs and accompanying material are available for public review and comment in the relevant dockets identified in this document for the ICR.

**DATES:** Comments must be received on or before January 28, 2014.

**ADDRESSES:** Submit your comments, identified by the docket ID number for the corresponding ICR as identified in this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2013–0459 and EPA–HQ–OPPT–2013–0460. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to the docket ID number for the corresponding ICR as identified in this document. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Ron Carlson, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8631; fax number: (202) 564–7480; email address: *carlson.ron@epa.gov*.

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

**SUPPLEMENTARY INFORMATION:**

## I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## II. What 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 any 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. Submit your comments by the deadline identified under **DATES**.
6. Identify the docket ID number assigned to the ICR action in the subject line on the first page of your response. You may also provide the ICR title and related EPA and OMB numbers.

## III. What do I need to know about PRA?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

As used in the PRA context, burden is defined in 5 CFR 1320.3(b).

## IV. Which ICRs are being renewed?

EPA is planning to submit a number of currently approved ICRs to OMB for review and approval under PRA. In addition to specifically identifying the ICRs by title and corresponding ICR, OMB and docket ID numbers, this unit provides a brief summary of the information collection activity and the Agency's estimated burden. The Supporting Statement for each ICR, a copy of which is available in the corresponding docket, provides a more detailed explanation.

### *A. Docket ID Number EPA–HQ–OPPT–2013–0459*

*Title:* Request for Contractor Access to TSCA CBI.

*ICR number:* EPA ICR No. 1250.10.

*OMB control number:* OMB Control No. 2070–0075.

*ICR status:* The approval for this ICR is scheduled to expire on June 30, 2014.

*Abstract:* Certain employees of companies working under contract to EPA require access to the Toxic Substances Control Act (TSCA) confidential business information collected under the authority of TSCA in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA confidential business information, requires that all individuals desiring access to TSCA CBI obtain and annually renew official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance, primarily the name, Social Security number and EPA identification badge number of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI. This information collection applies to the reporting activities associated

with contractor personnel applying for new or renewed clearance for TSCA CBI.

Responses to the collection of information are voluntary but failure to provide the requested information will prevent a contractor employee from obtaining clearance for TSCA CBI. Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

*Burden statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.6 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

*Respondents/Affected entities:* Entities potentially affected by this ICR include companies under contract to EPA to provide certain services, whose employees must have access to TSCA confidential business information to perform their duties.

*Estimated total number of potential respondents:* 20.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 15.

*Estimated total annual burden hours:* 483 hours.

*Estimated total annual costs:* $25,875. This includes an estimated burden cost of $25,875 and an estimated cost of $0 for non-burden hour paperwork costs, e.g., investment or maintenance and operational costs.

*Changes in the estimates from the last approval:* The renewal of this ICR will result in an overall decrease of 118 hours in the total estimated respondent burden identified in the currently approved ICR. This decrease reflects EPA's reduction in the estimated number of contractor employees needing clearance. This change is an adjustment.

*B. Docket ID Number EPA–HQ–OPPT–2013–0460*

*Title:* Correction of Misreported Chemical Substances on the TSCA Inventory.

*ICR number:* EPA ICR No. 1741.07.

*OMB control number:* OMB Control No. 2070–0145.

*ICR status:* The approval for this ICR is scheduled to expire on June 30, 2014.

*Abstract:* Section 8(b) of the Toxic Substances Control Act (TSCA) requires EPA to compile and keep current an Inventory of Chemical Substances in Commerce, which is a listing of chemical substances manufactured, imported, and processed for commercial purposes in the United States. The purpose of the Inventory is to define, for the purpose of TSCA, what chemical substances exist in U.S. commerce. Since the Inventory thereby performs a regulatory function by distinguishing between existing chemicals and new chemicals, which TSCA regulates in different ways, it is imperative that the Inventory be accurate.

However, from time to time, EPA or respondents discover that substances have been incorrectly described by reporting companies. Reported substances have been unintentionally misidentified as a result of simple typographical errors, the misidentification of substances, or the lack of sufficient technical or analytical information to characterize fully the exact chemical substances. EPA has developed guidelines (45 FR 50544, July 29, 1980) under which incorrectly described substances listed in the Inventory can be corrected. The correction mechanism ensures the accuracy of the Inventory without imposing an unreasonable burden on the chemical industry. Without the Inventory correction mechanism, a company that submitted incorrect information would have to file a premanufacture notification (PMN) under TSCA section 5 to place the correct chemical substance on the Inventory whenever the previously reported substance is found to be misidentified. This would impose a much greater burden on both EPA and the submitter than the existing correction mechanism. This information collection applies to reporting and recordkeeping activities associated with the correction of misreported chemical substances found on the TSCA Inventory.

Responses to the collection of information are voluntary. Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

*Burden statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.25 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

*Respondents/Affected entities:* Entities potentially affected by this ICR include manufacturers or importers of chemical substances, mixtures or categories listed on the TSCA Inventory and regulated under TSCA section 8 who had reported to EPA during the initial effort to establish the TSCA Inventory in 1979 and who need to make a correction to that submission.

*Estimated total number of potential respondents:* 9.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 20 hours.

*Estimated total annual costs:* $1,265. This includes an estimated burden cost of $1,265 and an estimated cost of $0 for non-burden hour paperwork costs, e.g., investment or maintenance and operational costs.

*Changes in the estimates from the last approval:* The renewal of this ICR will result in no change in the number of hours compared with the total estimated respondent burden identified in the currently approved ICR.

## V. What is the next step in the process for these ICRs?

EPA will consider the comments received and amend the individual ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of these ICRs to OMB and the opportunity for the public to submit additional comments for OMB consideration. If you have any questions about any of these ICRs or the approval process in general, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

## List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: November 21, 2013.

**James Jones,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2013–28646 Filed 11–27–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2013–0437; FRL 9903–41–OEI]**

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has submitted an information collection request (ICR), Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 36776) on June, 19 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before December 30, 2013.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2013–0437 to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number 734–214–4869; email address: *sohacki.lynn@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.*

*EPA ICR Number:* 0116.10.

*OMB Control Number:* 2060–0060.

*Abstract:* Under Section 206(a) of the Clean Air Act (42 U.S.C. 7521), on-highway engine and vehicle manufacturers may not legally introduce their products into US commerce unless EPA has certified that their production complies with applicable emission standards. Per section 207(a), original vehicle manufacturers must warrant that vehicles are free from defects in materials and workmanship that would cause the vehicle not to comply with emission regulations during its useful life. Section 207(a) directs EPA to provide certification to those manufacturers or builders of automotive aftermarket parts that demonstrate that the installation and use of their products will not cause failure of the engine or vehicle to comply with emission standards. An aftermarket part is any part offered for sale for installation in or on a motor vehicle after such vehicle has left the vehicle manufacturer's production line (40 CFR 85.2113(b)). Participation in the aftermarket certification program is voluntary. Aftermarket part manufacturers or builders (manufacturers) electing to participate conduct emission and durability testing as described in 40 CFR part 85, subpart V, and submit data about their products and testing procedures. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in CFR title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2).

*Form Numbers:* None.

*Respondents/affected entities:* Manufacturers or builders of automotive aftermarket parts. *Respondent's obligation to respond:* Voluntary.

*Estimated number of respondents:* 1 (total).

*Frequency of response:* On occasion.

*Total estimated burden:* 547 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $19,063 (per year), which includes $1,955 annualized capital or operation & maintenance costs.

*Changes in Estimates:* There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2013–28605 Filed 11–27–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9012–3]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 11/18/2013 Through 11/22/2013

Pursuant to 40 CFR 1506.9.

**Notice**

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

*EIS No. 20130349, Draft EIS, FHWA, NY,* New York Gateway Connections Improvement Project to the US Peace Bridge Plaza, *Comment Period Ends:* 01/13/2014, *Contact:* Jonathan McDade 518–431–4127.

*EIS No. 20130350, Final Supplement, NRC, TX,* Generic—License Renewal of Nuclear Plants, Supplement 48, Regarding South Texas Project Units 1 and 2, *Review Period Ends:* 12/30/2013, *Contact:* Tam Tran 301–415–3617.

EIS No. 20130351, Final EIS, BIA, CA, Soboba Band of Luiseno Indians' Proposed 534-Acre Trust Acquisition and Casino Project, *Review Period Ends:* 12/30/2013, *Contact:* John Rydzik 916–978–6051.

*EIS No. 20130352, Final Supplement, USACE, CA,* Sutter Basin Pilot Feasibility Study, *Review Period Ends:* 12/30/2013, *Contact:* Brad Johnson 916–557–7812.

*EIS No. 20130353, Draft EIS, BLM, CA,* Soda Mountain Solar Project, *Comment Period Ends:* 03/03/2014, *Contact:* Jeff Childers 951–697–5308.

*EIS No. 20130354, Final EIS, FHWA, FL,* Crosstown Expressway Extension, *Review Period Ends:* 12/30/2013, *Contact:* Cathy Kendall 850–553–2225.

**Amended Notices**

*EIS No. 20130335, Final EIS, BLM, NV,* Pan Mine Project, *Review Period Ends:* 12/19/2013, *Contact:* Miles Kreidler 775–289–1893 Revision to FR Notice Published 11/20/2013; Extending Review Period from 12/16/2013 to 12/19/2013.

*EIS No. 20130348, Draft EIS, BLM, UT,* TransWest Express Transmission Project, *Contact:* Sharon Knowlton 307–775–6124; Revision to FR Notice Published 11/22/2013; Retracted due to erroneous filing.

Dated: November 25, 2013.

**Cliff Rader,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2013–28658 Filed 11–27–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2013–0747; FRL–9903–35–OAR]**

## Notice of Receipt of Petitions for a Waiver of the Renewable Fuel Standard

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

**ACTION:** Notice.

**SUMMARY:** EPA has received a number of petitions for a waiver of the renewable fuel standards that would apply in 2014. The American Petroleum Institute (API) and the American Fuel & Petrochemical Manufacturers (AFPM) submitted a joint petition to the Administrator, dated August 13, 2013, on behalf of their members requesting a partial waiver of the 2014 applicable volumes under the RFS. Subsequently, several refining companies submitted individual petitions to the Administrator that also request a waiver of the 2014 applicable volumes. Section 211(o)(7)(A) of the Clean Air Act allows the Administrator of the EPA to waive the national volume requirements of the renewable fuel standard program in whole or in part if the Administrator determines that implementation of those requirements would severely harm the economy or environment of a State, a region, or the United States, or that there is inadequate domestic supply. EPA is inviting comment on all issues relevant to the petitions for a waiver that have been submitted. Comments submitted in response to a related **Federal Register** notice proposing the 2014 volume requirements will be considered to also have been submitted to the docket for this notice.

**DATES:** Comments must be received on or before January 28, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0747, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-Mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2013–0479, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments on the petitions for a waiver of the 2014 volume requirements to Docket ID No. EPA–HQ–OAR–2013–0747. Comments submitted in response to a related **Federal Register** notice proposing the 2014 volume requirements, docket EPA–HQ–OAR–2013–0479, will be considered to also have been submitted to Docket ID No. EPA–HQ–OAR–2013–0747. 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:** David Korotney, Office of Transportation and Air Quality, Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105; telephone number: (734) 214–4507; fax number: (734) 214–4050; email address: *korotney.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. How can I access the docket and/or submit comments?

EPA has established a public docket for this Notice under Docket ID No. EPA–HQ–OAR–2013–0747 which is available for online viewing at *www.regulations.gov,* or in person viewing at the EPA/DC Docket Center Public Reading Room, 1301 Constitution Avenue NW., Room 3334, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the waiver requests, 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.

### II. Background

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the Energy Policy Act of 2005 (EPAct), which added a renewable fuel program to the Clean Air Act (CAA, or ''Act''). The statutory provisions for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), and EPA published revised regulatory

requirements on March 26, 2010 (75 FR 14670). The transition from the requirements of EPAct to the requirements of EISA generally occurred on July 1, 2010.

EISA establishes annual ''applicable volumes'' for four categories of renewable fuel: cellulosic biofuel, biomass based diesel, advanced biofuel, and total renewable fuel. The statute specifies increasing applicable volumes through 2022 for all fuel types except biomass-based diesel, for which applicable volumes are specified through 2012. For years after those specified in the statute, EPA is to establish the applicable volumes after consideration of specified factors. The statute requires that EPA annually establish percentage standards that will ensure that required annual volumes of renewable fuels are used. However, EISA also provides the Administrator with authority to waive the applicable volumes of renewable fuels in appropriate circumstances.

The required volumes and associated percentage standards under the RFS program for the 2014 compliance year are being proposed in a related **Federal Register** notice. Under the RFS program, obligated parties, typically gasoline or diesel refiners or importers, are required to meet annual percentage standards to be in compliance. EPA sets these percentages, called the RFS percentage standards or RFS standards. Renewable identification numbers, or RINs, are assigned by renewable fuel producers to each gallon of qualifying renewable fuel that they produce, and serve as a means for demonstrating compliance by the obligated parties. RINs can be acquired by obligated parties who purchase renewable fuel with assigned RINs, or they can be purchased by obligated parties from other parties who have accumulated more RINs than necessary for their own compliance. Aside from using current-year RINs to demonstrate compliance in a given year, obligated parties may also choose (a) to use available RINs from the prior year towards the current year's requirement, up to a 20 percent cap, and/or (b) to carry forward a compliance deficit that can be satisfied in the next compliance year.

Section 211(o)(7)(A) of the Act allows the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to waive the national volume requirements of the RFS, in whole or in part, upon petition by one or more States, or by any party subject to the requirements of the RFS program. The Administrator may also waive the volume requirements on her own motion. A waiver may be issued if the Administrator determines, after public notice and opportunity for comment, that implementation of the RFS volume requirement would severely harm the economy or environment of a State, a region, or the United States, or that there is an inadequate domestic supply. If a waiver is granted, it can last no longer than one year but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

## III. What is today's action?

The American Petroleum Institute (API) and the American Fuel & Petrochemical Manufacturers (AFPM) submitted a petition to the Administrator, dated August 13, 2013, on behalf of their members requesting a partial waiver of the 2014 applicable volumes under the RFS. Subsequently, several refining companies submitted individual petitions to the Administrator that also request a waiver of the 2014 applicable volumes; nearly all of the petitions from individual companies incorporate the API/AFPM petition by reference. All of the petition letters are available in the docket, and any additional similar requests submitted to EPA will also be docketed and considered together with requests already received. EPA is seeking comment on the petitions for a waiver of the 2014 renewable fuel standard and matters relevant to EPA's consideration of those petitions.

The petitions generally argue that there is an inadequate domestic supply of renewable fuel and therefore RINs for 2014, due both to ethanol ''blendwall'' constraints and limitations on the production of non-ethanol fuels like biodiesel. Petitioners argue that this inadequate supply of renewable fuel (and RINs) will lead to an inadequate supply of gasoline and diesel, because refiners and importers, faced with a shortage of RINs, will reduce their production of gasoline and diesel for the domestic market. Petitioners argue that this will in turn severely harm the economy based on increased domestic gasoline and diesel prices. Petitioners attached an analysis, dated October 2012, conducted by NERA Economic Consulting, titled ''Economic Impacts Resulting from Implementation of RFS2 Program [sic].'' The petition requests that EPA exercise its waiver authorities under section 211(o)(7) to reduce the required national volume of total renewable fuel and advanced biofuel to certain specified levels.

In a separate action that proposes the applicable RFS percentage standards for 2014, EPA is proposing to waive part of the 2014 statutory RFS volumes. Specifically, in the separate **Federal Register** Notice of Proposed Rulemaking for the 2014 standards, EPA is proposing to find that there is an inadequate domestic supply of renewable fuels in 2014 under section 211(o)(7)(A). EPA is also proposing to reduce the applicable volume of cellulosic biofuel under section 211(o)(7)(D). Based on these findings, EPA is proposing to reduce the applicable volumes of total renewable fuel and advanced biofuel. EPA is not, however, proposing to find that implementation of the standards would severely harm the economy. In its separate proposal to establish the 2014 RFS volumes and percentage standards, EPA discusses in detail the legal, technical, and policy considerations that are the basis for its proposal.

EPA recognizes that there is significant overlap in the supporting data and issues raised in the petitions for a waiver and EPA's rulemaking to set the RFS percentage standards for 2014. Therefore, for the convenience of the parties and to avoid duplicative submissions by parties to both dockets, EPA will treat all comments and other information submitted to the docket for the 2014 RFS rulemaking (EPA–HQ–OAR–2013–0479) as also submitted to the docket for the petitions for a waiver (EPA–HQ–OAR–2013–0747). Therefore, parties will only need to submit additional comments or information to docket EPA–HQ–OAR–2013–0747 if those comments and information are intended solely for the petitions for a waiver and not for the rulemaking to set the 2014 RFS standards. EPA requests that such comments on the waiver petitions be submitted in the same time frame as comments on the rulemaking proposal. In light of the overlap in issues between the rulemaking proposal and petitions for waiver, EPA expects that our determination on the substance of the petitions for a partial waiver of the 2014 statutory volumes will be issued at the same time that EPA issues a final rule establishing the 2014 RFS standards.

EPA is issuing this notice to solicit comments and information on all of the issues raised in the petitions for a waiver.

Commenters should include data or specific examples in support of their comments in order to aid the Administrator in evaluating the requests for a waiver and determining what action if any is appropriate in light of all of the circumstances.

Dated: November 15, 2013.

**Janet G. McCabe,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 2013–28301 Filed 11–27–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–1017; FRL–9902–77]**

## Methiocarb, Lambda-Cyhalothrin, Permethrin and Prodiamine; Notice of Receipt of Requests To Voluntarily Cancel and Amend Registration(s) To Terminate Certain Uses

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily amend their Methiocarb, Lambda-Cyhalothrin, Permethrin and Prodiamine product registrations to delete one or more uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the use has been deleted only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before December 30, 2013.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, by one of the following methods:

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

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

**FOR FURTHER INFORMATION CONTACT:** John W. Pates, Jr. Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

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

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

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

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

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

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

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

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

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

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

### II. Background on the Receipt of Requests To Cancel and/or Amend Registrations To Delete Uses

This notice announces receipt by EPA of requests from registrants Wagner Regulatory Associates, Inc., on behalf of Willowood Lambda Cyhalothrin LLC, Gowan Company, Farnam Companies, Inc., Pyxis Regulatory Consulting, Inc. on behalf of Alligare, LLC. and Makhteshim Agan of North America, Inc. (MANA) to delete certain uses of Methiocarb, Lambda-Cyhalothrin, Permethrin and Prodiamine product registrations. In letters dated September 10, 2013, September 27, 2013, September 20, 2013, October 28, 2013 and October 31, 2013 the Gowan Company, Wagner Regulatory Associates, Inc., Farnam Companies, Inc., Pyxis Regulatory Consulting, Inc. and MANA requested EPA to cancel certain uses of pesticide product registrations identified in Tables 1 and 2 of Unit II., respectively. Specifically, Gowan Company voluntarily requested the removal/deletion of domestic outdoor uses and nonresidential turf uses from the Methiocarb technical label. The registrant also requested a 30-day comment period, and waived the 180-day comment period. Wagner Regulatory Associates, Inc. voluntarily requested the cancellation of indoor and outdoor residential uses from the Willowood Lambda-Cyhalothrin technical label. The registrant requested a 30-day comment period, and waived the 180-day comment period. Farnam Companies, Inc. voluntarily requested the cancellation of dog use from the Permethrin Farnam Purge Plus Insecticide label. The registrant requested a 30-day comment period, and waived the 180-day comment period. Pyxis Regulatory Consulting, Inc. voluntarily requested the use deletion of weed control of drainage ditches in California and Arizona from the Alligare Prodiamine 4L and 65 WG Herbicide labels. The registrant requested a 30-day comment period, and waived the 180-day comment period. MANA voluntarily requested the termination of the drainage ditch uses

from the Prodiamine 65WG label. The registrant requested a 30-day comment period, and waived the 180-day comment period. The requests would not terminate the last Methiocarb, Lambda-Cyhalothrin, Permethrin or Prodiamine products registered for use in the United States, or the last Methiocarb, Lambda-Cyhalothrin, Permethrin or Prodiamine pesticide products registered in the United States for these uses.

## III. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to delete certain uses of Methiocarb, Lambda-Cyhalothrin, Permethrin and Prodiamine product registrations. The request would delete: Methiocarb domestic outdoor uses and nonresidential turf uses from the Methiocarb technical label (EPA Reg. No. 10163–230); Lambda-Cyhalothrin indoor and outdoor residential use from the Willowood Lambda-Cyhalothrin technical label (EPA Reg. No. 88541–1); Permethrin use on dogs from the label of Farnam Purge Pesticide (EPA Reg. No. 270–279); Prodiamine use for weed control of drainage ditches in California and Arizona from label (EPA Reg. Nos. 81927–49 and 81927–36); and Prodiamine drainage ditch uses from label (EPA Reg. No. 66222–89). The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

| Registration No. | Product name | Company | Uses to be deleted |
|---|---|---|---|
| 000270–00279 | Farnam Purge Plus Insecticide | Farnam Companies, Inc | Use on dogs. |
| 010163–00230 | Mesurol Technical Insecticide | Gowan Company | Domestic outdoor and nonresidential turf uses. |
| 066222–00089 | Prodiamine 65 WG Herbicide | Makhteshim Agan of North America, Inc. | Drainage ditch uses. |
| 081927–00036 | Alligare Prodiamine 65 WG Herbicide | Alligare, LLC | Weed control of drainage ditches in CA and AZ. |
| 081927–00049 | Alligare Prodiamine 4L | Alligare, LLC | Weed control of drainage ditches in CA and AZ. |
| 088541–00001 | Willowood Lambda-Cyhalothrin Technical. | Willowood Lambda Cyhalothrin, LLC | Indoor and outdoor residential use. |

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

| EPA company number | Company name and address |
|---|---|
| 270 | Farnam Companies, Inc., 301 West Osborn Road, Phoenix, AZ 85013. |
| 10163 | Gowan Company, P.O. Box 5569, Yuma, AZ 85366. |
| 66222 | Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. |
| 81927 | Alligare, LLC, Agent: Pyxis Regulatory Consulting, Inc., 4110 136th St. NW., Gig Harbor, WA 98332. |
| 88541 | Willowood Lambda Cyhalothrin, LLC, Agent: Wagner Regulatory Associates, P.O. box 640, Hockessin, DE 19707–0640. |

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The Methiocarb, Lambda-Cyhalothrin, Permethrin and Prodiamine product registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

## V. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use deletion should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

## VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for amendments to delete uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for amendments to delete uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 of Unit III.

Once EPA has approved product labels reflecting the requested amendments to delete uses, registrants will be permitted to sell or distribute products under the previously approved

labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: November 13, 2013.

**Michael Goodis,**

*Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2013–28675 Filed 11–27–13; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Tuesday, December 3, 2013 at 10:00 a.m.

**PLACE:** 999 E Street NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2013–28790 Filed 11–26–13; 4:15 pm]

BILLING CODE 6715–01–P

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS13–24]**

### Appraisal Subcommittee; Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of meeting.

*Description:* In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

*Location:* Federal Reserve Board—International Square location, 1850 K Street NW., 4th Floor, Washington, DC 20006.

*Date:* December 11, 2013.

*Time:* 10:00 a.m.

*Status:* Closed

*Matters To Be Considered:*

October 9, 2013 minutes—Closed Session

Preliminary discussion of State Compliance Reviews

Personnel

Dated: November 25, 2013.

**James R. Park,**

*Executive Director.*

[FR Doc. 2013–28712 Filed 11–27–13; 8:45 am]

BILLING CODE 6700–01–P

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**[Docket No. AS13–25]**

### Appraisal Subcommittee; Notice of Meeting

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Notice of meeting.

*Description:* In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

*Location:* Federal Reserve Board—International Square location, 1850 K Street NW., 4th Floor, Washington, DC 20006.

*Date:* December 11, 2013.

*Time:* 10:30 a.m.

*Status:* Open.

**Matters To Be Considered**

*Summary Agenda*

October 9, 2013 minutes—Open Session

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

*Discussion Agenda*

Delegation of Authority Recommendation

○ 2014 Meeting Schedule

Federal Advisory Committee Charter

Appraisal Foundation August 2013 Grant Reimbursement Request

Compliance Review(s)

Staff Service Recognition

*How To Attend and Observe an ASC Meeting*

If you plan to attend the meeting in person, we ask that you notify the Federal Reserve Board via email at *appraisal-questions@frb.gov,* requesting a return meeting registration email. The Federal Reserve Law Enforcement Unit will then send an email message with a Web link where you may provide your date of birth and social security number through their encrypted system. You may register until close of business December 4, 2013. You will also be asked to provide identifying information, including a valid government-issued photo ID, before being admitted to the meeting. Alternatively, you can contact Kevin Wilson at 202–452–2362 for other registration options. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: November 25, 2013.

**James R. Park,**

*Executive Director.*

[FR Doc. 2013–28713 Filed 11–27–13; 8:45 am]

BILLING CODE 6700–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations and Terminations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked or terminated for the reason shown pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

*License No.:* 003009N.

*Name:* Super Freight International, Inc.

*Address:* 650 N. Edgewood Avenue, Wood Dale, IL 60191.

*Date Revoked:* October 4, 2013.

*Reason:* Failed to maintain a valid bond.

*License No.:* 3163F.

*Name:* DVS International, Inc.
*Address:* 8150 NW 71st Street, Miami, FL 33166.
*Date Revoked:* October 10, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 7952N.
*Name:* Freight Line of the Americas, Inc.
*Address:* 9115 NW 105th Circle, Medley, FL 33178.
*Date Revoked:* September 20, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 017531F.
*Name:* New York Logistic Services, Inc.
*Address:* 1308 Merrywood Drive, Edison, NJ 08817.
*Date Revoked:* September 13, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 17895NF.
*Name:* Maritime International, Inc. dba Trade Link.
*Address:* 5000 Business Center Drive, Suite 300, Savannah, GA 31405.
*Date Revoked:* September 27, 2013.
*Reason:* Voluntary surrender of license.

*License No.:* 020224F.
*Name:* Sunshine Service International, Inc.
*Address:* 147–35 183rd Street, Suite 203, Jamaica, NY 11413.
*Date Revoked:* September 5, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 021817N.
*Name:* Bring Logistics US, Inc.
*Address:* 4500 North Sam Houston Pkwy., Suite 130, Houston, TX 77086.
*Date Revoked:* September 19, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 021817F.
*Name:* Bring Logistics US, Inc.
*Address:* 4500 North Sam Houston Pkwy., Suite 130, Houston, TX 77086.
*Date Revoked:* September 26, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 021971NF.
*Name:* CMX Global Freight Services, Inc.
*Address:* 5353 W. Imperial Hwy., Suite 200, Los Angeles, CA 90045.
*Date Revoked:* September 16, 2013.
*Reason:* Voluntary surrender of license.

*License No.:* 022001NF.
*Name:* Encompass Global Logistics, LLC.
*Address:* 18881 Von Karman Avenue, Suite 1450, Irvine, CA 92612.
*Date Revoked:* September 20, 2013.
*Reason:* Failed to maintain valid bonds.

*License No.:* 022367N.
*Name:* Blue Ocean Logistics Corporation dba B.O. Logistic Corp.
*Address:* 2461 West 205th Street, Unit B–105, Torrance, CA 90501.
*Date Revoked:* September 5, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 023372N.
*Name:* DS International Corporation.
*Address:* 315 Harbor Way, South San Francisco, CA 94080.
*Date Revoked:* September 20, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 023736N.
*Name:* Global Tradewinds NVOCC, Inc.
*Address:* 3532 Katela Avenue, Suite 227, Los Alamitos, CA 90720.
*Date Revoked:* September 16, 2013.
*Reason:* Failed to maintain a valid bond.

*License No.:* 023886N.
*Name:* Contrans Cargo Inc.
*Address:* 831 S. Lemon Avenue, Unit A11F, Walnut, CA 91789.
*Date Revoked:* September 27, 2013.
*Reason:* Failed to maintain a valid bond.

**James A. Nussbaumer,**
*Deputy Director, Bureau of Certification and Licensing.*

[FR Doc. 2013–28519 Filed 11–27–13; 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 December 13, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The James M. and Devon J. Goetz Family Trust Five, Mandan, North Dakota, the South Dakota Trust Company, LLC, Sioux Falls, South Dakota, as trustee and James M. Goetz, Mandan, North Dakota, as Investment Advisor,* to acquire voting shares of Oliver Bancorporation, Inc., Center, North Dakota, and thereby indirectly acquire voting shares of Security First Bank of North Dakota, New Salem, North Dakota.

Board of Governors of the Federal Reserve System, November 25, 2013.

**Michael J. Lewandowski,**
*Associate Secretary of the Board.*

[FR Doc. 2013–28619 Filed 11–27–13; 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 December 23, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Citizens National Corporation,* Wisner, Nebraska; to acquire 100

percent of the voting shares of Cass County State Company, and thereby indirectly acquire voting shares of Cass County Bank, Inc., both in Plattsmouth, Nebraska.

Board of Governors of the Federal Reserve System, November 25, 2013.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2013–28625 Filed 11–27–13; 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 December 23, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Plains Bancshares, Inc.,* Plains, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Plains State Bank, Plains, Kansas.

Board of Governors of the Federal Reserve System, November 22, 2013.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2013–28620 Filed 11–27–13; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Extension of Public Comment Period

**AGENCY:** Federal Trade Commission (FTC).

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

**SUMMARY:** The FTC is soliciting public comments on proposed information requests to Patent Assertion Entities (''PAEs'') asserting patents in a variety of sectors, as well as a group of other entities asserting patents specifically in the wireless communications sector, including manufacturers and other non-practicing entities and organizations engaged in licensing. The Commission has now determined to extend the public comment period until December 16, 2013.

**DATES:** Comments must be received on or before December 16, 2013.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''PAE Reports: Paperwork Comment; Project No. P131203'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/paestudypra,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** William F. Adkinson, Jr., Attorney Advisor, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580; (202) 326–2096; *paestudy@ftc.gov.*

**SUPPLEMENTARY INFORMATION:** On September 27, 2013, the Commission announced that it would seek public comments on a proposal to gather information from approximately 25 companies known as Patent Assertion Entities (''PAEs''), along with 15 other entities asserting patents specifically in the wireless communications sector. For purposes of this notice, PAEs are firms with a business model based primarily on purchasing patents and then attempting to generate revenue by asserting the intellectual property against persons who are already practicing the patented technology.[1] A notice containing the proposed information requests and seeking public comment was published in the **Federal Register** on October 3, 2013.[2] The Commission intends to use this information to add to the existing literature and evidence on PAE activity. These comments will be considered before the FTC submits a request for Office of Management and Budget review of the compulsory process orders described in this notice under the Paperwork Reduction Act. The compulsory process orders will seek information from firms concerning, among other things, patent acquisition, litigation, and licensing practices.

The Commission has now determined to extend the public comment period until December 16, 2013. The Commission will not consider requests for further extension. You may file a comment online or on paper, and the content of the comment should conform to the requirements detailed in the October 3, 2013 **Federal Register** Notice. For the Commission to consider your comment, we must receive it on or before December 16, 2013. Write ''PAE Reports: Paperwork Comment; Project No. P131203'' on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country

[1] The Commission distinguishes PAEs from other non-practicing entities or NPEs that primarily seek to develop and transfer technology, such as universities, research entities and design firms. Fed. Trade Comm'n, The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition, 8 n.5 (2011), *available at http://www.ftc.gov/os/2011/03/110307patentreport.pdf.*

[2] *See Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request,* 78 FR 61,352 (Oct. 3, 2013), *available at http://www.ftc.gov/os/fedreg/2013/10/131003agencyinfofrn.pdf.*

equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[3] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/paestudypra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''PAE Reports: Paperwork Comment; Project No. P131203'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 16, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2013–28528 Filed 11–27–13; 8:45 am]

**BILLING CODE 6750–01–P**

[3] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–00XX; Docket No. 2013–0001; Sequence No. 8]**

## Submission for OMB Review; MyUSA

**AGENCY:** Office of Citizen Services and Innovative Technologies (OCSIT), General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to approve a new information collection requirement concerning MyUSA.

**DATES:** Submit comments on or before December 30, 2013.

**ADDRESSES:** Submit comments identified by Information Collection 3090–00XX; MyUSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–00XX; MyUSA.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–00XX; MyUSA'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001. ATTN: IC 3090–00XX; MyUSA.

*Instructions:* Please submit comments only and cite Information Collection 3090–00XX; MyUSA, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Sarah Crane, Director, Office of Citizen Services and Innovative Technologies, General Services Administration, at telephone number 202–208–5855, or via email to *Sarah.Crane@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

MyUSA (*https://my.usa.gov*) provides an account to users that give them control over their interactions with government agencies and how government uses and accesses their personal information. Users have the option of creating a personal profile that can be reused across government to personalize interactions and streamline common tasks such as filling out forms. Government agencies can build applications that can request permission from the user to access their MyUSA Account and read their personal profile.

The information in the system is contributed voluntarily by the user and cannot be accessed by the government without explicit consent of the user; information is not shared between government agencies, except when the user gives explicit consent to share his or her information, and as detailed in the MyUSA System of Records Notice (SORN) (*http://www.gpo.gov/fdsys/pkg/FR–2013–07–05/pdf/2013–16124.pdf*).

The information collected is basic profile information, and may include: Name, home address, phone number, date of birth, gender, marital status and basic demographic information such as whether the individual is married, a veteran, a small business owner, a parent or a student.

Use of the system, and contribution of personal information, is completely voluntary.

A notice was published in the **Federal Register** at 78 FR 49270, on August 13, 2013. No comments were received.

### B. Public Comments

Pursuant to section 3506(c)(2)(A) of the PRA, GSA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the Agency's 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.

**C. Annual Reporting Burden**

*Respondents:* 10,000.
*Responses per Respondent:* 1.
*Total annual responses:* 10,000.
*Hours per Response:* .25.
*Total Burden Hours:* 2,500.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001, telephone 202–501–4755. Please cite OMB Control No. 3090–00XX, MyUSA, in all correspondence.

Dated: November 25, 2013.

**Casey Coleman,**

*Chief Information Officer.*

[FR Doc. 2013–28715 Filed 11–27–13; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Meeting of the Presidential Commission for the Study of Bioethical Issues

**AGENCY:** Presidential Commission for the Study of Bioethical Issues, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice of meeting.

**SUMMARY:** The Presidential Commission for the Study of Bioethical Issues (the Commission) will conduct its fifteenth meeting on December 18, 2013. At this meeting, the Commission will discuss the BRAIN Initiative and ongoing work in neuroscience.

**DATES:** The meeting will take place Wednesday, December 18, 2013, from 9:00 a.m. to approximately 5:15 p.m.

**ADDRESSES:** The Hamilton Crowne Plaza Hotel, 1001 14th Street NW., Washington, DC 20005. Telephone (202) 682–0111.

**FOR FURTHER INFORMATION CONTACT:** Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW, Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *Hillary.Viers@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the fifteenth meeting of the Commission. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at *www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an expert panel of not more than 13 members who are drawn from the fields of bioethics, science, medicine, technology, engineering, law, philosophy, theology, or other areas of the humanities or social sciences. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda item for the Commission's fifteenth meeting is to discuss the BRAIN Initiative and ongoing work in neuroscience.

The draft meeting agenda and other information about the Commission, including information about access to the webcast, will be available at *www.bioethics.gov.*

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful debate of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted at the registration desk and comment forms will be provided to members of the public in order to write down questions and comments for the Commission as they arise. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection.

Written comments will also be accepted in advance of the meeting and are especially welcome. Please address written comments by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Dated: November 12, 2013.

**Lisa M. Lee,**

*Executive Director, Presidential Commission for the Study of Bioethical Issues.*

[FR Doc. 2013–28621 Filed 11–27–13; 8:45 am]

**BILLING CODE 4154–06–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30 Day–14–13AAH]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

CDC Work@Health Program: Phase 2 Training and Technical Assistance Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Centers for Disease Control and Prevention (CDC) is establishing the Work@Health Program, a comprehensive worksite health promotion training program, to support employers' efforts to create healthy work environments and provide employees with opportunities to make healthy lifestyle choices. The Work@Health Program will train and support small, mid-size, and large employers with three primary goals: (1) Increase understanding of the training needs of employers and the best way to deliver skill-based training to them; (2) Increase employers' level of knowledge and awareness of worksite health program concepts and principles as well as tools and resources to support the design, implementation, and evaluation of effective worksite health strategies and interventions; and (3) Increase the number of science-based worksite health programs, policies, and practices in place at participating employers' worksites and increase the access and opportunities for employees to participate in them.

CDC is requesting OMB approval to initiate Phase 2 information collection. Phase 2 procedures were informed by a needs assessment and pilot test that were conducted in fall 2013 (''CDC Work@Health Program: Phase 1,'' OMB No. 0920–0989, exp. 9/30/2014). In Phase 2, CDC will offer training in four models (formats): (1) A ''Hands-on'' instructor-led workshop model (T1), (2) a self-paced ''Online'' model (T2), (3) a combination or ''Blended'' model (T3), and (4) a ''Train-the-Trainer'' model (T4) designed to prepare qualified individuals to train employers through the Hands-on, Online, or Blended models.

To evaluate the training, information will be collected from approximately 540 employers and approximately 60 individuals who are interested in becoming trained/certified instructors for the Work@Health Program. Respondents will include employers/employees, trainees who participate in the four training models, and training and technical assistance instructors, coaches and subject matter experts.

CDC will use the information collected to evaluate the effectiveness of the Work@Health Program in terms of (1) increasing employer's knowledge and awareness of worksite health concepts, principles, and resources and (2) increasing the number of science-based worksite health programs, policies and practices in place at participating employers' worksites. The information will also be used to identify the best way(s) to deliver skill-based training and technical support to employers in the area of worksite health.

OMB approval is requested for two years. Participation in Work@Health is voluntary and there are no costs to participants other than their time and cost of travel to the training. The total estimated annualized burden hours are 1,601.

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hr) |
|---|---|---|---|---|
| Interested Employer | Employer Application Form | 600 | 1 | 20/60 |
| Employers Participating in Work@Health™ | CDC Worksite Health Scorecard. | 540 | 1 | 30/60 |
| | Organizational Assessment | 540 | 1 | 15/60 |
| | Employer Follow-up Survey | 270 | 1 | 15/60 |
| | Case Study Interviews with Senior Leadership. | 3 | 1 | 1 |
| | Case Study Interviews with Employees. | 6 | 1 | 1 |
| Trainees Participating in the Work@Health™ Program (Hands-on, Online, Blended models). | Trainee KAB Survey | 1,080 | 1 | 20/60 |
| | Trainee Reaction Survey—Hands-On Model. | 180 | 1 | 15/60 |
| | Trainee Reaction Survey—Online Model. | 180 | 1 | 15/60 |
| | Trainee Reaction Survey—Blended Model. | 180 | 1 | 15/60 |
| | Trainee Technical Assistance Survey. | 1,080 | 1 | 15/60 |
| | Case Study Interviews with Selected Trainees. | 15 | 1 | 1 |
| | Trainee Focus Group Discussion Guide. | 11 | 1 | 1.5 |
| Interested Train-the-Trainer Participants | Train-the-Trainer Application Form. | 60 | 1 | 30/60 |
| Trainees Participating in the Work@Health™ Program (Train-the-Trainer model). | Train-the-Trainer Participant Survey. | 60 | 1 | 20/60 |
| | Trainee Reaction Survey—Train-the-Trainer Model. | 30 | 1 | 15/60 |
| Train-the-Trainer Trainee Technical Assistance Survey | | 60 | 1 | 15/60 |
| Trainees participating in the Work@Health™ Program Wave 2. | Wave 2 Trainee Reaction Survey. | 150 | 1 | 15/60 |
| Work@Health™ Instructors/Coaches | Instructor/Coach Group Discussion Guide. | 21 | 1 | 30/60 |

**Leroy Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2013–28592 Filed 11–27–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–194]**

### 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 December 30, 2013:

**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) 395–6974 *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:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Medicare Disproportionate Share Adjustment (DSH) Procedures and Criteria and Supporting Regulations; *Use:* Section 1886(d)(5)(F) of the Social Security Act provides for additional payment to hospitals that serve a disproportionate share of the indigent patient population. This payment is an add-on to the set amount per case that we pay to hospitals under the Medicare Inpatient Prospective Payment System. To meet the qualifying criteria for this additional DSH payment, a hospital must prove that a disproportionate percentage of its patients are low income using Supplemental Security Income and Medicaid as proxies for this determination. Once a hospital qualifies for the DSH payment, we also determine the hospital's payment adjustment. *Form Number:* CMS–R–194 (OCN: 0938–0691); *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profits and not-for-profit institutions); *Number of Respondents:* 800; *Total Annual Responses:* 800; *Total Annual Hours:* 400. (For policy questions regarding this collection contact JoAnne Cerne at 410–786–4530.)

Dated: November 22, 2013.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2013–28524 Filed 11–27–13; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10512, CMS–R–153 and CMS–10277]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates 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 must be received by January 28, 2014.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and

recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

**CMS–10512 Direct Service Workforce Resource Center CC Survey Instrument**

**CMS–R–153 Medicaid Drug Use Review Program**

**CMS–10277 Hospice Conditions of Participation and Supporting Regulations**

Under the Paperwork Reduction Act (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 requires federal agencies to publish a 60-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.

**Information Collections**

1. *Type of Information Collection Request:* New collection (request for new OMB control number); *Title of Information Collection:* Direct Service Workforce (DSW) Resource Center (RC) Core Competencies (CC) Survey Instrument; *Use:* This survey is part of Phase IIIB of the Direct Service Workforce Resource Center's Road Map of Core Competencies for the Direct Service Workforce, a multi-phased research project implemented to identify a common set of core competencies across community-based long-term services and supports (LTSS) population sectors: Aging, behavioral health (including mental health and substance use), intellectual and developmental disabilities, and physical disabilities. Phase IIIB includes (1) Field testing and a national study to validate the core competency set among the workforce; (2) establishing the core competency set in the public domain; and (3) providing technical assistance to promote the development of specializations within each sector. The survey serves as item 1 of Phase IIIB.

No data that validates cross-sector core competencies in the direct service workforce has been previously collected. The data collected in the survey will be used by the DSW RC, states, direct service agencies and other partners interested in implementing the core competencies. The target populations for the surveys include DSW professionals, front line supervisors and managers, agency administrators and directors, participants and families/guardians, and self-advocates.

The overall purpose of this survey is to confirm and validate that the DSW RC's set of core competencies are relevant and applicable to actual direct service workers, their employers and their participants. Information gained from the survey will lend credibility to the set of core competencies. As the population of older adults with long-term services and supports needs grow, more emphasis will be placed on the DSW and a universally accepted set of core competencies such as that produced by the DSW RC would increase retention, agility and capacity of the workforce.

Collecting these data from a broad range of stakeholders in the direct service workforce industry will provide critical information about the relevance and validity of the set of core competencies. The surveys will collect the data in a manner that is consistent across all population sectors, service populations and states.

We, in collaboration with the DSW RC, will use the resources and tools developed and refined through this project to develop a Direct Service Workforce set of Core Competencies web-based toolkit that will be made available to all states and territories. It will also establish the core competency set in the public domain and provide technical assistance to promote the development of specializations within each sector. *Form Number:* CMS–10512 (OCN: 0938—New); *Frequency:* Once; *Affected Public:* Individuals and households, Private sector (business or other for-profits and not-for-profit institutions) and State, Local, or Tribal Governments; *Number of Respondents:* 4,800; *Total Annual Responses:* 4,800; *Total Annual Hours:* 2,400. (For policy questions regarding this collection contact Kathryn King at 410–786–1283).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Use Review Program; *Use:* This information collection is necessary to: Establish patient profiles in pharmacies, identify problems in prescribing, dispensing, or both prescribing and dispensing; determine each program's ability to meet minimum standards required for federal financial participation; and ensure quality pharmaceutical care for Medicaid patients. State Medicaid agencies that have prescription drug programs are required to perform prospective and retrospective drug use review in order to identify aberrations in prescribing, dispensing, and patient behavior. *Form Number:* CMS–R–153 (OCN: 0938–0659); *Frequency:* Yearly, quarterly, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 510; *Total Annual Hours:* 20,298. (For policy questions regarding this collection contact Madlyn Kruh at 410–786–3239).

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospice Conditions of Participation and Supporting Regulations; Use: The Conditions of Participation and

accompanying requirements are used by Federal or State surveyors as a basis for determining whether a hospice qualifies for approval or re-approval under Medicare. We believe that the availability to the hospice of the type of records and general content of records, which the final rule (72 FR 32088) specifies, is standard medical practice, and is necessary in order to ensure the well-being and safety of patients and professional treatment accountability. There are no program changes to this information collection request, meaning there are no new requirements; however, we are currently adjusting the numbers of respondents and responses. The final numbers will be present in the 30-day notice. *Form Number:* CMS–10277 (OCN: 0938–1067); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 2,872; *Total Annual Responses:* 1,808,345; *Total Annual Hours:* 2,152,396. (For policy questions regarding this collection contact Danielle Shearer at 410–786–6617.)

Dated: November 22, 2013.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2013–28537 Filed 11–27–13; 8:45 am]

**BILLING CODE 4120–01–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3285–FN]**

### Medicare and Medicaid Programs; Continued Approval of American Osteopathic Association/Healthcare Facilities Accreditation Program's Critical Access Hospital Accreditation Program

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Final notice.

**SUMMARY:** This final notice announces our decision to approve the American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP) for continued recognition as a national accrediting organization (AO) for critical access hospitals (CAH) that wish to participate in the Medicare or Medicaid programs.

**DATES:** This final notice is effective December 27, 2013 through December 27, 2019.

**FOR FURTHER INFORMATION CONTACT:** James Cowher, (410) 786–41948, Cindy Melanson, (410) 786–0310, or Patricia Chmielewski, (410) 786–6899.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a CAH provided certain requirements are met. Sections 1820(c)(2)(B), 1820(e), and 1861(mm)(1) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR 485, subpart F specify the conditions that a CAH must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for CAHs.

Generally, to enter into an agreement, a CAH must first be certified by a state survey agency as complying with the conditions or requirements set forth in part 485, subpart F. Thereafter, the CAH is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements. However, there is an alternative to surveys by state agencies. Certification by a nationally recognized accreditation program can substitute for ongoing state review.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national AO that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

Our regulations concerning the approval of AOs are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS. The AOA/HFAP's current term of approval for their CAH accreditation program expires December 27, 2013.

### II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

### III. Provisions of the Proposed Notice

On June 25, 2013, we published a proposed notice in the **Federal Register** (78 FR 38043) announcing AOA/HFAP's request for approval of its CAH accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4 and § 488.8, we conducted a review of AOA/HFAP's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of AOA/HFAP's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decisionmaking process for accreditation.
- The comparison of AOA/HFAP's accreditation to our current Medicare CAH conditions of participation (CoPs).
- A documentation review of AOA/HFAP's survey process to:

++ Determine the composition of the survey team, surveyor qualifications, and AOA/HFAP's ability to provide continuing surveyor training.

++ Compare AOA/HFAP's processes to those of state survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ Evaluate AOA/HFAP's procedures for monitoring CAHs out of compliance with AOA/HFAP's program requirements. The monitoring procedures are used only when AOA/HFAP identifies noncompliance. If noncompliance is identified through validation reviews, the state survey agency monitors corrections as specified at § 488.7(d).

++ Assess AOA/HFAP's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ Establish AOA/HFAP's ability to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of staff and other resources.

++ Confirm AOA/HFAP's ability to provide adequate funding for performing required surveys.

++ Confirm AOA/HFAP's policies with respect to whether surveys are announced or unannounced.

++ Obtain AOA/HFAP's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the June 25, 2013 proposed notice also solicited public comments regarding whether AOA/HFAP's requirements met or exceeded the Medicare conditions of participation for CAHs. We received no comments in response to our proposed notice.

## IV. Provisions of the Final Notice

### *A. Differences Between AOA/HFAP's Standards and Requirements for Accreditation and Medicare's Conditions and Survey requirements*

We compared AOA/HFAP's CAH requirements and survey process with the Medicare CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of AOA/HFAP's CAH application, which were conducted as described in section III of this final notice, yielded the following:

- To meet the requirements at § 485.623(b)(5), AOA/HFAP revised its standards to require all ventilation systems, both new and existing, supplying operating rooms to meet the humidity control requirements..
- To meet the requirements at § 485.623(c)(1), AOA/HFAP revised its standards to incorporate specific staff training requirements for protection in place or methods for the evacuation of patients, when necessary.
- To meet the requirements at § 485.635(e), AOA/HFAP revised its standards to include staff qualification requirements for rehabilitation therapy services.
- To meet the requirements at § 488.4(a)(6), AOA/HFAP revised its ''Complaint/Incident Management Policy,'' to ensure all onsite complaint surveys are documented on a survey report.
- To meet the requirements of section 2728 of the SOM, AOA/HFAP will continue to use its internal monitoring plan to ensure timeframes for sending or receiving a plan of correction (PoC) are met.
- To meet the requirements of section 2728B of the SOM, AOA/HFAP will continue to conduct monthly internal audits to ensure accepted PoC's contain all of the required elements.

### *B. Term of Approval*

Based on our review and observations described in section III of this final notice, we have determined that AOA/HFAP's CAH accreditation program requirements meet or exceed our requirements. Therefore, we approve AOA/HFAP as a national AO for CAHs that request participation in the Medicare program, effective December 27, 2013 through December 27, 2019.

## V. Collection of Information Requirements

This document does not impose information collection, recordkeeping or third party disclosure requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**Authority:** (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 12, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2013–28521 Filed 11–27–13; 8:45 am]

**BILLING CODE 4120–01–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–1439]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Adverse Event Program for Medical Products

**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 the collection of information regarding the Adverse Event Program for medical devices.

**DATES:** Submit either electronic or written comments on the collection of information by January 28, 2014.

**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, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *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.

**Adverse Event Program for Medical Devices (Medical Product Safety Network)—(OMB Control Number 0910–0471)—Extension**

Among other things, section 519 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360i) authorizes FDA to require: (1) manufacturers to report medical device-related deaths, serious injuries, and malfunctions and (2) user facilities to report device-related deaths directly to manufacturers and FDA and serious injuries to the manufacturer. Section 213 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) amended section 519(b) of the FD&C Act relating to mandatory reporting by user facilities of deaths, serious injuries, and serious illnesses associated with the use of medical devices. This amendment legislated the replacement of universal user facility reporting by a system that is limited to a ''. . . subset of user facilities that constitutes a representative profile of user reports'' for device-related deaths and serious injuries. This amendment is reflected in section 519(b)(5)(A) of the FD&C Act. This legislation provides FDA with the opportunity to design and implement a national surveillance network, composed of well-trained clinical facilities, to provide high-quality data on medical devices in clinical use. This system is called the Medical Product Safety Network (MedSun).

FDA is seeking OMB clearance to continue to use electronic data collection to obtain the information on Form FDA 3500A (approved under OMB control number 0910–0291) related to medical devices and tissue products from the user facilities participating in MedSun, to obtain a demographic profile of the facilities, and for additional questions which will permit FDA to better understand the cause of reported adverse events. Participation in the program is voluntary and currently includes 250 facilities.

In addition to collecting data on the electronic adverse event report form, MedSun collects additional information from participating sites about reported problems emerging from the MedSun hospitals. This data collection is also voluntary and is collected on the same Web site as the report information.

The burden estimate is based on the number of facilities currently participating in MedSun (250). FDA estimates an average of 15 reports per site annually. This estimate is based on MedSun working to promote reporting in general from the sites, as well as promoting reporting from specific parts of the hospitals, such as the pediatric intensive care units, the electrophysiology laboratories, and the hospital laboratories.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | No. of respondents | No. of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| MedSun facilities participating in the electronic reporting of adverse events program (Form FDA 3670) ..... | 250 | 15 | 3,750 | 0.75 | 2,813 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 22, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–28600 Filed 11–27–13; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–1422]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Eye Tracking Study of Direct-to-Consumer Prescription Drug Advertisement Viewing

**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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled, ''Eye Tracking Study of Direct-to-Consumer Prescription Drug Advertisement Viewing.'' This study is designed to use eye tracking technology to explore how consumers view direct-to-consumer (DTC) prescription drug advertisements (ads) that include text regarding risk information and reporting side effects and that vary in the amount of distracting audio and visual content during the presentation of the risk information.

**DATES:** Submit either electronic or written comments on the collection of information by January 28, 2014.

**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, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *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 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.

**Eye Tracking Study of Direct-to-Consumer Prescription Drug Advertisement Viewing—(OMB Control Number 0910–NEW)**

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

Current regulations require that a major statement of the risks of prescription drugs be included in at least the audio of DTC television ads. FDA has proposed including the risk information in DTC television ads in superimposed text as well as in the audio (75 FR 15376, ''Direct-to-Consumer Prescription Drug Advertisements; Presentation of the Major Statement in Television and Radio Advertisements in a Clear, Conspicuous, and Neutral Manner''). In addition, Title IX of the Food and Drug Administration Amendments Act (Pub. L. 110–85) required a study to determine if the statement ''You are encouraged to report negative side effects of prescription drugs to the FDA. Visit *www.fda.gov/medwatch,* or call 1–800–FDA–1088'' (the MedWatch statement) is appropriate for inclusion in DTC television ads. These communications have been tested separately by FDA. The first study found that participants were better able to recall the drug risks when they were presented in superimposed text as well as in audio (OMB Control Number 0910–0634, ''Experimental Evaluation of the Impact of Distraction''). The second study found that the inclusion of the MedWatch statement does not interfere with participants' understanding of the risk information (OMB Control Number 0910–0652,''Experimental Study: Toll-Free Number for Consumer Reporting of Drug Product Side Effects in Direct-to-Consumer Television Advertisements for Prescription Drugs''). Thus, these two new communications may appear in future DTC television ads. However, they have not been examined together.

In addition, questions continue to arise about the use of potentially distracting images and sounds during the major statement of risks in DTC television ads. The first study referenced above found no differences among ads that differed in the affective tone of static, non-moving visuals presented during the major statement of risks. Previous research has shown that factors such as multiple scene changes and music in advertising can be distracting. However, the effects of this kind of distraction during the major statement of risks on consumers' perceptions and risk recall has not been tested in the presence of risk reinforcing superimposed text.

This project is designed to use eye tracking technology to determine how these communications in DTC ads are perceived and the impact of distraction. Eye tracking technology is an effective method to determine the extent to which consumers attend to risk information presented in DTC television ads. This technology allows researchers to unobtrusively detect and measure where a participant looks while viewing a television ad and for how long, and the pattern of their eye movements may indicate attention to and processing of information in the ad.

We plan to collect descriptive eye tracking data on participants' attention to (1) the superimposed text during the major statement of risk information and (2) the MedWatch statement. Further, we plan to examine experimentally the effect of distraction. We hypothesize that distracting audio and visuals during the major statement will decrease risk recall, risk perceptions, and attention to superimposed text risk information. To test these hypotheses, we will conduct inferential statistical tests such as analysis of variance. With the sample size described below, we will have sufficient power to detect small- to medium-sized effects in the main study.

We plan to conduct one 60-minute pilot study with 30 participants and one 30-minute main study with 300 participants. All participants will be 18 years of age or older who self-identify as needing to lose more than 30 pounds. We will exclude individuals who work in healthcare or marketing or who wear bifocals or hard contact lenses. The studies will be conducted in person in at least five different cities across the United States.

The pilot study and main study will have the same design and will follow the same procedure. Participants will be randomly assigned to one of three test conditions (low, medium, and high distraction in a DTC television ad). The ad will be for a fictitious weight loss prescription drug. The ads are currently being created and pretested to ensure that consumers perceive different levels of distraction across the ads (OMB Control Number 0910–0695, ''Stimuli Development and Pretests for an Attentional Effects Study''). For instance, as the distraction level increases, the number of scene changes and on-screen activity during the major statement will increase.

We will explain the study procedure to participants and calibrate the eye tracking device. To collect eye tracking data, we will use an unobtrusive computer-interfaced eye tracker with a minimum speed of 60 Hertz. The test images will be shown on a computer monitor with a minimum size of 20 inches and a minimum display resolution of $1{,}280 \times 1{,}024$. To simulate normal television ad viewing, participants will watch a 2 to 5 minute video clip followed by a series of three ads. One of the ads will be the study ad. The video clip and non-study ads will be unrelated to health. The order of the ads will be counterbalanced, and only eye tracking data from the study ad will be analyzed. Next, participants will complete a questionnaire that assesses risk perceptions, risk recall, recall of the MedWatch statement, and covariates such as demographics and health literacy. In the pilot study, participants will also answer questions as part of a debriefing interview to assess the study design and questionnaire. The questionnaire is available upon request.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Eye tracking study of DTC prescription drug advertisement viewing | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Pilot study screener | 200 | 1 | 200 | 0.03 (2 minutes) | 6 |
| Main study screener | 2,000 | 1 | 2,000 | 0.03 (2 minutes) | 60 |
| Pilot study | 30 | 1 | 30 | 1 | 30 |
| Main study | 300 | 1 | 300 | 0.50 (30 minutes) | 150 |
| Total | | | | | 246 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 22, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–28599 Filed 11–27–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0716]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Designated New Animal Drugs for Minor Use and Minor Species

**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 December 30, 2013.

**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 0910–0605. 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, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *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.

#### Designated New Animal Drugs for Minor Use and Minor Species; 21 CFR Part 516—(OMB Control Number 0910–0605)—Extension

*Description:* The Minor Use and Minor Species Animal Health Act of 2004 (MUMS) (Pub. L. 108–282) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species as well as uncommon diseases in major animal species. This legislation provides incentives designed to help pharmaceutical companies overcome the financial burdens they face in providing limited-demand animal drugs. These incentives are only available to sponsors whose drugs are ''MUMS-designated'' by FDA. Minor use drugs are drugs for use in major species (cattle, horses, swine, chickens, turkeys, dogs, and cats) that are needed for diseases that occur in only a small number of animals either because they occur infrequently or in limited geographic areas. Minor species are all animals other than the major species; for example, zoo animals, ornamental fish, parrots, ferrets, and guinea pigs. Some animals of agricultural importance are also minor species. These include animals such as sheep, goats, catfish, and honeybees. Participation in the MUMS program is completely optional for drug sponsors so the associated paperwork only applies to those sponsors who request and are subsequently granted ''MUMS designation.'' The rule specifies the criteria and procedures for requesting MUMS designation as well as the annual reporting requirements for MUMS designees.

Section 516.20 (21 CFR 516.20) provides requirements on the content and format of a request for MUMS-drug designation; § 516.26 (21 CFR 516.26) provides requirements for amending MUMS-drug designation; provisions for change in sponsorship of MUMS-drug designation can be found under § 516.27 (21 CFR 516.27); under § 516.29 (21 CFR 516.29) are provisions for termination of MUMS-drug designation; under § 516.30 (21 CFR 516.30) are requirements for annual reports from sponsor(s) of MUMS-designated drugs; and under § 516.36 (21 CFR 516.36) are provisions for insufficient quantities of MUMS-designated drugs.

*Description of Respondents:* Pharmaceutical companies that sponsor new animal drugs.

In the **Federal Register** of July 2, 2013 (78 FR 39734), 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 |
|---|---|---|---|---|---|
| 516.20; Content and format of MUMS request | 15 | 5 | 75 | 16 | 1,200 |
| 516.26; Requirements for amending MUMS designation | 3 | 1 | 3 | 2 | 6 |
| 516.27; Change in sponsorship | 1 | 1 | 1 | 1 | 1 |

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

| 21 CFR Section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 516.29; Termination of MUMS designation | 2 | 1 | 2 | 1 | 2 |
| 516.30; Requirements for annual reports | 15 | 5 | 75 | 2 | 150 |
| 516.36; Insufficient quantities | 1 | 1 | 1 | 3 | 3 |
| Total | | | | | 1,362 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this reporting requirement was derived in our Office of Minor Use and Minor Species Animal Drug Development by extrapolating the current investigational new animal drug/new animal drug application reporting requirements for similar actions by this same segment of the regulated industry and from previous interactions with the minor use/minor species community.

Dated: November 22, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–28598 Filed 11–27–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; 30-Day Comment Request; Data Collection To Understand How NIH Programs Apply Methodologies To Improve Their Research Programs (MIRP)

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 9, 2013, page 55084 and allowed 60-days for public comment. One comment was received. However, the issues addressed in the comment were not related to the information collection proposed, and will not be considered in the finalization process. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

**DATES:** *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: Ms. Dione Washington, Strategic Planning and Evaluation Branch, OSPIDA, NIAID, NIH, 6610 Rockledge Dr., Rm 2501, Bethesda, MD 20892–6620, or Email your request, including your address to *washingtondi@niaid.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

*Proposed Collection:* Data collection to understand how NIH programs apply methodologies to improve their research programs (MIRP), 0925–NEW, National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH).

*Need and Use of Information Collection:* In this submission, NIAID is requesting an OMB generic clearance for formative research activities relating to the collection of data to assist the Institute in understanding the usefulness of a range of methodologies that are employed to increase organizational effectiveness. The Office of Management and Budget (OMB) and Office of Science and Technology Policy (OSTP) have instructed agencies to apply rigorous strategy management principles to ensure resources are directed at high-priority programs and avoid duplication of effort. A key aspect to ensuring resources dedicated to these programs are applied efficiently and effectively is to understand how NIH research programs apply methodologies to improve their organizational effectiveness. The degree of an organization's effectiveness is commonly recognized to be influenced by many factors. These can include the clarity of its purpose and strategy, how it allocates and structures its work, the processes used to carry out operations, the way technologies are used to support work, the people involved and their skills and abilities, the way relationships are managed with partners and stakeholders, and how leadership functions, particularly in terms of its ability to ensure that all the other components are aligned in supporting work towards the mission. Many methodologies are commonly employed in all sectors, including government, with the goal of increasing organizational effectiveness. Some examples of those used widely are strategic planning and strategy management, total quality management, change management, organizational assessment and intervention, organizational design, process improvement, leadership development, performance management, and workforce training and professional development, among others. There are many models and approaches to each of these methodologies. Each one can be implemented in a wide range of ways. Reflection on and learning from methodologies that have been used and the ways in which they have been employed is critical to continually ensuring that government functions effectively.

The primary use for information gathered through voluntary survey pilot testing, surveys, focus groups, interviews, and collaborative data interpretation meetings to understand the use of strategy management in research programs supported by the NIH. The information will improve approaches to implementing strategic management, which will lead to more efficient use of resources. Results gathered in these data will be used to

enhance implementation of methodologies to improve organizational effectiveness. The main goal of this information is to improve program outcomes and increase the efficiency of resource utilization. The knowledge gained from these collections will be used to strengthen the planning, implementation, and monitoring of NIH research programs, as well as to strengthen strategy management in NIH research programs.

The questions asked, and the data to be collected are rooted in established business-based paradigms but specifically adapted for use (and relevance) in a biomedical research environment, in order to discern: 1) Factors that enhance (or inhibit) organizational effectiveness in research programs; 2) utility and acceptance of these kinds of efforts among biomedical researchers and research stakeholders. The results from this formative research project will inform quality improvement activities in several areas, including goal setting, capability and resource evaluation, operational efficiency, and performance monitoring. Utilized data collection methodologies will be administered in a manner that minimizes public information collection burden. These include, but are not limited to, surveys, focus groups, and/or cognitive interviews. Separate and distinct generic clearances are requested to facilitate the efficiency of submission and review of these projects as required by the OMB Office of Information and Regulatory Affairs

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 4775.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total annual burden hour |
|---|---|---|---|---|---|
| Pilot Test | Science professional, researchers, institutional officials, network leadership, program administrators, and research site staff.. | 900 | 1 | 45/60 | 675 |
| Survey | | 2500 | 1 | 30/60 | 1250 |
| Interview | | 1000 | 1 | 90/60 | 1500 |
| Focus group | | 375 | 1 | 2/60 | 750 |
| Data interpretation meeting with stakeholders. | | 150 | 1 | 4/60 | 600 |

Dated: November 21, 2013.

**Brandie Taylor,**

*Project Clearance Liaison, Chief, Evaluation Section, OPSIDA, NIAID, NIH.*

[FR Doc. 2013–28636 Filed 11–27–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Device for Vascular Dilation**

*Description of Technology:* The invention is an enhanced vascular dilator that eliminates the vascular injury caused by the size mismatch between vascular introducer sheaths and vascular dilators, as the two are advanced into a blood vessel. The invention provides a ''shoulder'' to match the diameter of the introducer sheath so that there is a smooth transition, without size mismatch, between the dilator and the introducer sheath. The invention allows the dilator to be withdrawn in segments from the introducer sheath. This is especially valuable to reduce vascular injury when using large-bore introducer sheaths for interventional procedures including transcatheter valves and endografts.

*Potential Commercial Applications:*

- Caval access.
- Vascular access.

*Competitive Advantages:* Non-perforating.

*Development Stage:* Prototype.

*Inventors:* Robert Lederman (NHLBI), Ozgur Kocaturk (NHLBI), Adam Greenbaum (Henry Ford Hospital).

*Intellectual Property:* HHS Reference No. E–759–2013/0—US Provisional Patent Application 61/890,961 filed 15 October 2013.

*Licensing Contact:* Michael Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize interventional catheter-based procedures to reduce vascular injury. For collaboration opportunities, please contact Peg Koelble at *koelblep@nhlbi.nih.gov.*

**Her2 Monoclonal Antibodies, Antibody Drug Conjugates, and Site Specific Antibody Conjugate Methods**

*Description of Technology:* Antibody drug conjugates (ADC) can demonstrate high efficacy as cancer therapeutics, however, much more can be done to improve their efficacy and safety profile. Site-specific antibody drug conjugation is a promising way to do this.

The scientists at the NIH have identified a fully human monoclonal antibody, m860, that binds to cell surface-associated Her2 with affinity

comparable to that of Trastuzumab (Herceptin) but to a different epitope. In addition, the scientist developed a site-specific glycan engineering method to conjugate the antibody to the small molecule drug auristatin F. The ADC prepared though this site-specific approach shows very good stability, cell surface binding activity and also potent specific cell killing activity against Her2 positive cancer cells, including Trastuzumab resistant breast cancer cells. This ADC has the potential to be developed as a targeted therapeutic for Her2-overexpressing cancers and this site-specific strategy could be readily applied to develop ADCs targeting other cancers that express cell surface markers or other disease targets.

*Potential Commercial Applications:*

- Therapeutic for the treatment of Her2 positive cancers.
- Method for producing safer and more effective ADCs.

*Competitive Advantages:*

- Could be used in combination with Trastuzumab or for patients who have developed resistance to Trastuzumab treatment, since this antibody targets a different epitope.
- Site specific conjugation provides better efficacy and less side effects than ADCs produced using traditional strategies.
- Can be readily applied to develop ADCs targeting other cancers that express cell surface markers or other disease targets, such as HIV.

*Development Stage:*

- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

*Inventors:* Dimiter S. Dimitrov (NCI), Zhu Zhongyu (NCI), Pradman K. Qasba (NCI), Boopathy Ramakrishnan (NCI).

*Intellectual Property:* HHS Reference No. E–351–2013/0—US Provisional Application No. 61/833,732 filed 11 June 2013.

*Licensing Contact:* Whitney A. Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize monoclonal antibodies, ADCs, and methods. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov.*

**Non-invasive Early Stage Lung Cancer Diagnostic and Prognostic Assays**

*Description of Technology:* The present invention provides a unique non-invasive diagnostic to detect early stage lung cancer and predict patient survival through a simple assay utilizing urine samples. Urine samples minimize patient discomfort unlike current early detection methods that are highly invasive, such as a biopsy or bronchoscopy, or utilize expensive computer tomography (CT) scans that expose patients to harmful radiation. Although the sensitivity of low dose CT scans is high, the specificity is low, resulting in high false positive rates. Utilizing metabolic profiling of urine samples obtained from 1,005 people, the scientists have developed and validated this unique metabolite profile that diagnoses early stage lung cancer and predicts patient survival with a high accuracy.

*Potential Commercial Applications:*

- Diagnostic test for early stage lung cancer.
- Prognostic test for patient survival.
- Method to help physicians make informed treatment decisions.

*Competitive Advantages:* Urinary patient samples—no need for needles, invasive surgery, or claustrophobic tests.

*Development Stage:*

- Early-stage.
- In vivo data available (human).

*Inventors:* Curtis Harris (NCI), Majda Haznadar (NCI), Frank Gonzalez (NCI), Ewy Mathe (NCI), Kristopher Krausz (NCI), Soumen Manna (NCI), and Andrew Patterson (Pennsylvania State University)

*Intellectual Property:* HHS Reference No. E–121–2013/0—US Patent Application No. 61/845,055 filed 11 July 2013

*Related Technology:* HHS Reference No. E–248–2002/0—US Patent Application No. 10/533,459 filed 02 May 2005; PCT Application No. PCT/US2013/055746 filed 20 August 2013

*Licensing Contact:* Jennifer Wong, M.S.; 301–435–4633; *wongje@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute, Laboratory of Human Carcinogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Non-invasive Urinary Biomarkers Highly Predictive of Non-small Cell Lung Cancer Status and Survival. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov.*

**Intravenous Water Soluble Formulation of MJC13—A Novel Lead Compound for the Treatment of Castrate-Resistant Prostate Cancer**

*Description of Technology:* Normal prostate growth and maintenance is dependent on androgens acting through the androgen receptor (AR). AR expression is maintained and plays an important role throughout prostate cancer progression. A lead molecule, MJC13, has been identified and has higher potency and better selectivity for AR than any other compound tested. It has been shown to effectively block AR-dependent gene expression in cellular models of prostate cancer at micromolar concentrations.

MJC13, although an attractive drug candidate, has low aqueous solubility. This has hindered the clinical development of MJC13. Scientists at NIH, University of Texas-El-Paso and Texas Southern University have developed a water soluble and stable MJC13 liquid dosage formulation that is suitable for intravenous administration. The solubility of this formulation has increased over 25,000 times compared to MJC13 itself. Additionally, a sensitive LC/MS/MS method to analyze MJC13 has also been developed, which can detect as little as 1 ng/mL of MJC13 in solution or plasma. These studies are of great importance for future pre-clinical and clinical studies of MJC13.

*Potential Commercial Applications:* Develop MJC13 as a clinical drug product for the treatment of castrate-resistant prostate cancer (CRPC), in which current treatment options are ineffective.

*Competitive Advantages:* Water soluble formulation of the lead compound, MJC13, that will enable further pharmacokinetic/pharmacodynamic studies and clinical studies required for commercial development of the drug.

*Development Stage:*

- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

*Intellectual Property:* HHS Reference No. E–065–2013/0—US Provisional Application No. 61/788,716 filed 15 March 2013.

*Related Technology:* HHS Reference No. E–162–2009/0—US Patent Application No. 13/395,976 filed 14 March 2012.

*Licensing Contact:* Eggerton Campbell, Ph.D.; 301–435–5282; *campbellea2@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology with an initial goal of preclinical evaluation and an ultimate goal of clinical testing. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov.*

**Methods of Modulating Chemotherapeutic Cytotoxicity**

*Description of Technology:* Investigators at the National Cancer Institute (NCI) have discovered that blockade of the signalling activity of a single cell-surface receptor, CD47, in cancer cells results in enhanced sensitivity of cancer cells to chemotherapy treatment and in healthy tissues reduces damage to normal cells. Many chemotherapeutic agents cause significant cytotoxicity to non-cancer (''normal'') cells, resulting in undesirable side-effects and often limiting the dose and/or duration of chemotherapy that can be administered to a patient. The present invention relates to a method of using CD47-modulating compounds in combination with a chemotherapeutic agent to increase the efficacy of that agent against inhibiting tumor growth. The invention also relates to methods for preventing damage to heart tissue associated with the use of anthracycline chemotherapy. The current invention builds on the NIH's previous discoveries of antibodies, antisense morpholino oligonucleotides, and peptide compounds that modulate CD47.

*Potential Commercial Applications:* Combination Chemotherapy

*Competitive Advantages*:

- Enhance effectiveness of chemotherapeutic agents.
- Limit off target effects on normal tissue.
- Reduces cytotoxicity of normal cells.
- Provides cardioprotection for anthracyclines.

*Development Stage:*

- Early-stage.
- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

*Inventors:* David D. Roberts and David R. Soto Pantoja (NCI).

*Publication:* Soto-Pantoja DR, et al. CD47 deficiency confers cell and tissue radioprotection by activation of autophagy. Autophagy. 2012 Nov;8(11):1628–42. [PMID 22874555]

*Intellectual Property:* HHS Reference No. E–296–2011/0—US Application No. 61/779,587 filed 13 March 2013

*Related Technology:* HHS Reference No. E–227–2006/5–

- US Application No. 12/444,364 filed 03 April 2009.
- CA Application No. 2,665,287 filed 05 October 2007.
- EP Application No. 07868382.8 filed 27 March 2009.
- US Application No. 13/546,941 filed 11 July 2012.
- US Application No. 13/546,931 filed 11 July 2012.

*Licensing Contact:* Charlene Maddox, Ph.D.; 301–435–4689; *sydnorc@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute, Laboratory of Pathology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize CD47 targeting therapeutics, cardioprotection, autophagy modulation. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov.*

Dated: November 21, 2013.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2013–28558 Filed 11–27–13; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB 2014–05 Reducing Health Disparity SBIR Review.

*Date:* March 6, 2014.

*Time:* 10:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Dated: November 22, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–28559 Filed 11–27–13; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; K22 Grant Applications for PAR–12–121.

*Date:* December 3, 2013.

*Time:* 9:00 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 7W030, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Sergei Radaev, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Bethesda, MD 20892, 240–276–6466, *sradaev@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting date due to scheduling conflicts.

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: November 21, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–28564 Filed 11–27–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel Partnerships for Biodefense (R01).

*Date:* December 18, 2013.

*Time*: 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place*: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Dr., MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *robert.unfer@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: *November 22, 2013.*

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–28561 Filed 11–27–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism.

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 Alcohol Abuse and Alcoholism.

*Date:* February 4–5, 2014.

*Closed:* February 4, 2014.

*Time:* 5:00 p.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, T–508, Rockville, MD 20852.

*Closed:* February 5, 2014, 1:30 p.m. to 2:00 p.m.

*Agenda:* Presentation of the Board of Scientific Counselors' evaluation of NIAAA's Intramural Programs.

*Open:* 2:00 p.m. to 5:00 p.m.

*Agenda:* Presentations and other business of the council.

*Place:* National Institutes of Health, 31 Center Drive, Wilson Hall, Bethesda, MD 20892.

*Contact Person:* Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism National, Institutes of Health, 5635 Fishers Lane, Rm 2085, Rockville, MD 20852, 301–443–9737, *bautisa@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS).

Dated: November 22, 2013.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–28563 Filed 11–27–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel Partnerships for Biodefense (R01).

*Date:* December 18, 2013.

*Time:* 9:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jay.radke@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immunology Quality Assessment (IQA) Program.

*Date:* December 19, 2013.

*Time:* 9:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Raymond R. Schleef, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–3679, *schleefrr@niaid.nih.gov*.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special

Emphasis Panel Partnerships for Biodefense (R01).

*Date:* December 19, 2013.

*Time:* 9:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jay.radke@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: November 22, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–28562 Filed 11–27–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

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 ALLERGY AND INFECTIOUS DISEASES, 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:* Division of Intramural Research Board of Scientific Counselors, NIAID.

*Date:* December 9–11, 2013.

*Time:* December 09, 2013, 7:45 a.m. to 5:45 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, Conference Rooms 1227/1233, 50 Center Drive, Bethesda, MD 20892.

*Time:* December 10, 2013, 8:30 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, Conference Rooms 1227/1233, 50 Center Drive, Bethesda, MD 20892.

*Time:* December 11, 2013, 7:30 a.m. to 11:15 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, Conference Rooms 1227/1233, 50 Center Drive, Bethesda, MD 20892.

*Contact Person:* Kathryn C. Zoon, Ph.D., Director, Division of Intramural Research, National Institute of Allergy, and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to finalizing the agenda and scheduling of events.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: *November 22, 2013.*

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–28560 Filed 11–27–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2012–0022]**

### Technical Resource for Incident Prevention (TRIPwire) User Registration

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** 30-day notice and request for comments; New Information Collection Request: 1670–NEW.

**SUMMARY:** The Department of Homeland Security Headquarters (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Protective Security Coordination Division (PSCD), Office for Bombing Prevention (OBP) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning New Information Collection Request—Technical Resource for Incident Prevention (TRIPwire) User Registration. DHS previously published this ICR in the **Federal Register** on February 27, 2013, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until December 30, 2013. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, DHS, Office of Civil Rights and Civil Liberties. Comments must be identified by ''DHS–2012–0022'' and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**FOR FURTHER INFORMATION CONTACT:** William Cooper, DHS/NPPD/IP/PSCD/OBP, *William.Cooper@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** TRIPwire is OBP's online, collaborative, information-sharing network for bomb squad, law enforcement, and other emergency services personnel to learn about current terrorist improvised explosive device (IED) tactics,

techniques, and procedures, including design and emplacement considerations. TRIPwire was established as an IED information-sharing resource under Homeland Security Presidential Directive 19 (HSPD–19), which calls for a unified national policy for the prevention and detection of, protection against, and response to terrorist use of explosives in the United States. Users from Federal, state, local, and tribal government entities; as well as business and for-profit industries can register through the TRIPwire Secure Portal. The TRIPwire portal contains sensitive information related to terrorist use of explosives and therefore user information is needed to verify eligibility and access to the system. TRIPwire applicants must provide their full name, assignment, citizenship, job title, employer name, professional address and contact information, as well as an Employment Verification Contact and their contact information. The system does not store sensitive PII such as social security numbers. The collection of PII by TRIPwire to establish user accounts occurs in accordance with the DHS Privacy Impact Assessment PIA–015, ''DHS Web Portals,'' DHS/ALL–004—General Information Technology Access Account Records System (GITAARS) November 27, 2012, 77 FR 70792, and DHS/ALL–002—Department of Homeland Security Mailing and Other Lists System November 25, 2008, 73 FR 71659. Participation in TRIPwire is voluntary. However, those who choose to participate are required to complete the registration process to obtain access. This requirement is designed to measure users' suitability to access the secure environment.

The information collected during the TRIPwire user registration process is reviewed electronically by the TRIPwire team to vet the user's ''need to know,'' which determines their eligibility for and access to TRIPwire. Memberships are re-verified annually based on the information users provide upon registration or communication with the TRIPwire help desk analysts. The information collected is for internal TRIPwire and OBP use only.

**Analysis**

*Agency:* Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Protective Security Coordination Division, Office for Bombing Prevention.

*Title:* Technical Resource for Incident Prevention (TRIPwire) User Registration.

*OMB Number:* 1670–NEW.

*Frequency:* Once.

*Affected Public:* Federal, state, local, and tribal government entities, business, and for-profit.

*Number of Respondents:* 3500 respondents (estimate).

*Estimated Time per Respondent:* 10 minutes.

*Total Burden Hours:* 584 annual burden hours.

*Total Burden Cost (capital/startup):* $0.

*Total Recordkeeping Burden:* $0 (This assessment resides on the TRIPwire Portal, and there is no cost associated with the recordkeeping of TRIPwire-related information.)

*Total Burden Cost (operating/maintaining):* $14,968.00.

Dated: November 21, 2013.

**Scott Libby,**

*Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. 2013–28535 Filed 11–27–13; 8:45 am]

**BILLING CODE 9110–9P–P**

---

## DEPARTMENT OF HOMELAND SECURITY

### National Protection and Programs Directorate

**[Docket No. DHS–2013–0043]**

### New Information Collection Request; General Meeting Registration and Evaluation

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** 60-Day notice and request for comments; 1670–NEW.

**SUMMARY:** The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), Office of Emergency Communications (OEC) 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 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS is soliciting comments concerning the General Meeting Registration and Evaluation.

**DATES:** Comments are encouraged and will be accepted until January 28, 2014. This process is conducted in accordance with 5 CFR Part 1320.

**ADDRESSES:** Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/CS&C/OEC, Attn.: Richard Reed, 202–343–1666, *Richard.E.Reed@dhs.gov.* Written comments should reach the contact person listed no later than January 28, 2014. Comments must be identified by ''DHS–2013–0043'' and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email: Richard.E.Reed@dhs.gov.*

Include the docket number in the subject line of the message.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

**SUPPLEMENTARY INFORMATION:** OEC was formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 101 et seq., as amended, to fulfill its statutory responsibility of conducting nationwide outreach through hosted events, including conferences, meetings, workshops, etc. The general registration form, general pre-meeting form, and general evaluation form will be used to gather information to support these events and for follow-up with stakeholders that attend such events. The registration, pre-meeting, and evaluation forms may be submitted electronically or in paper form.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**Analysis**

*Agency:* Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, Office of Emergency Communications.

*Title:* General Meeting Registration and Evaluation.

*OMB Number:* 1670–NEW.

**General Registration Form**

*Frequency:* On occasion.

*Affected Public:* State, local, or tribal government.

*Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 10 minutes.

*Total Burden Hours:* 850 annual burden hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $22,457.

**Pre-Meeting Survey**

*Frequency:* On occasion.

*Affected Public:* State, local, or tribal government.

*Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 10 minutes.

*Total Burden Hours:* 850 annual burden hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $22,457.

**Post-Meeting/Workshop/Training Evaluation**

*Frequency:* On occasion.

*Affected Public:* State, local, or tribal government.

*Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 15 minutes.

*Total Burden Hours:* 1,250 annual burden hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $33,025.

Dated: November 21, 2013.

**Scott Libby,**

*Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. 2013–28702 Filed 11–27–13; 8:45 am]

BILLING CODE 9910–9P–P

## DEPARTMENT OF HOMELAND SECURITY

**[DHS–2013–0037]**

## Committee Name: Homeland Security Information Network Advisory Committee (HSINAC)

**AGENCY:** Operation Coordination and Planning/Office of Chief Information Officer (OPS/OCIO)

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Information Network Advisory Council (HSINAC) will meet December 17, 2013 from 1 p.m.–3 p.m. EST virtually through HSIN Connect, an online web-conferencing tool and via teleconference. The meeting will be open to the public.

**DATES:** The HSINAC will meet Tuesday, December 17, 2013 from 1 p.m.—3 p.m. EST via conference call and HSIN Connect, an online web-conferencing tool, both of which will be made available to members of the general public. Please note that the meeting may end early if the committee has completed its business.

**ADDRESSES:** The meeting will be held virtually via HSIN Connect, an online web-conferencing tool at *https://share.dhs.gov/hsinac,* and available via teleconference at 1–800–320–4330 Conference Pin: 673978 for all public audience members. To access the web conferencing tool go to *https://share.dhs.gov/hsinac,* click on ''enter as a guest'', type in your name as a guest and click ''submit.'' The teleconference lines will be open for the public and the meeting brief will be posted beforehand on the **Federal Register** site (*https://www.federalregister.gov/*). If the federal government is closed, the meeting will be rescheduled.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Michael Brody, *michael.brody@hq.dhs.gov,* 202–343–4211, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee. Comments must be submitted in writing no later than December 13th and must be identified by the docket number—DHS–2013–0037—and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Michael Brody, *michael.brody@hq.dhs.gov.* Please also include the docket number in the subject line of the message.
- *Fax:* 202–343–4294
- *Mail:* Michael Brody, Department of Homeland Security, OPS CIO–D Stop 0426, 245 Murray Lane, SW., BLDG 410, Washington, DC 20528–0426.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number (DHS–2013–0037) for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the HSINAC go to *http://www.regulations.gov* and type the docket number of DHS–2013–0037 into the ''search'' field at the top right of the Web site.

A public comment period will be held during the meeting on Tuesday, December 17, 2013 from 2:45 p.m. to 3 p.m., and speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact one of the individuals listed below to register as a speaker.

**FOR FURTHER INFORMATION CONTACT:** Designated Federal Officer, Michael Brody, *Michael.brody@hq.dhs.gov,* Phone: 202–343–4211, Fax: 202–343–4294, Or Alternate Designated Federal Officer, Sarah Schwettman, *sarah.schwettman@hq.dhs.gov,* Phone: 202–343–4212.

**SUPPLEMENTARY INFORMATION:** The Homeland Security Information Network Advisory Committee (HSINAC) is an advisory body to the Homeland Security Information Network (HSIN) Program Office. This committee provides advice and recommendations to the U.S. Department of Homeland Security (DHS) on matters relating to HSIN. These matters include system requirements, operating policies, community organization, knowledge management, interoperability and federation with other systems, and any other aspect of HSIN that supports the operations of DHS and its federal, state, territorial, local, tribal, international, and private sector mission partners. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The HSINAC provides advice and recommendations to DHS on matters relating to HSIN.

**Agenda**

- HSIN Program Update
  - New Hires—How the HSIN program has increased the quantity and quality of its Federal workforce.
  - New Development Contract—How the HSIN Program has implemented a new contract for the engineering and architecture team that builds the HSIN system.
  - New Outreach Contract—How the HSIN Program has implemented a new engagement to maintain and improve upon its mission advocate team for all HSIN users.
  - Budget/Investment Requirements—A summary of HSIN's current financial position, and expenditures for the upcoming fiscal year.

- HSIN Optimization and Development Vision
  - Improving System Performance and Service Operations—A summary of the steps the program has and will be taking to ensure the current platform meets user service requirements and agreements.
  - Interoperability and Federation—A discussion of the program's plans to link HSIN to a series of partner networks that will provide all users with greater access to new collaborative partners and their content.
  - Large List—A summary of how the program is implementing new ways to ensure the validation of users is fast and efficient.
  - New Development Environments—A discussion on how HSIN is creating a set of new virtual environments for its new development team to use that are stable and accurately replicate the actual network, to ensure, final, new developments work as planned and meet requirements.
  - DHS Suspicious Activity Reporting (SAR)—An introduction to how HSIN is developing a new capability for the quick and efficient delivery and sharing of suspicious activity reports by users of all kinds including those from the private sector.
- Portal Consolidation Update—A review of HSIN's efforts to save resources across the Federal government by consolidating a series of systems into the single, HSIN platform.
- Public comment period
- Deliberation/Voting/Obtain guidance from HSINAC on:
  - Stakeholder Management Strategy—A review of HSIN's new strategy for ensuring managed growth, user self-sufficiency, and prioritized engagements with critical partners in the coming year.
  - Messaging/Communications Strategy—An update on HSIN's work to define its place in the information sharing market, what defines it, its value proposition, and the best way to communicate these terms.
  - HSIN Mobile Use/Application Policy—An opportunity for HSINAC members to comment on the development of a new policy that will define the rights, duties and privileges to use HSIN on mobile devices ensuring security and accessibility.
- Closing remarks
- Adjournment of the meeting

**James Lanoue,**

*HSIN Acting Program Manager.*

[FR Doc. 2013–28703 Filed 11–27–13; 8:45 am]

**BILLING CODE 9910–9B–P**

---

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2013–0078]**

## Cooperative Research and Development Agreement (CRADA) Opportunity With the Department of Homeland Security for the Testing of Reusable Electronic Conveyance Security Device (RECONS) Solutions

**AGENCY:** Borders and Maritime Security Division (BMD), Homeland Advanced Research Projects Agency, Science and Technology Directorate, Department of Homeland Security.

**ACTION:** Notice of intent.

**SUMMARY:** BMD is initiating a project to demonstrate that commercially available conveyance security solutions can be utilized with a common data management system in the following Government operations (described in detail later):

- Centralized Examination Station (CES)
- In-bond
- National Capital Region Secure Delivery
- Cross-border Commerce

BMD is looking to enter into a Cooperative Research and Development Agreement (CRADA) with interested partner(s) to test the interoperability and conveyance security capabilities of their solutions in a lab environment and then assess their ability to support CES, In-bond, National Capital Region Secure Delivery, and Cross-border Commerce operations in a technology demonstration.

The results of the project are intended to serve as a data point for the standard under development for reusable electronic conveyance security devices (RECONS). The RECONS Standard will support certification of partner solutions to be used by industry for their cross-border commerce shipments (described in detail later) in addition to the Government in their aforementioned operations.

The proposed term of the CRADA can be up to twenty-four (24) months.

**DATES:** Submit comments on or before December 30, 2013.

**ADDRESSES:** Mail comments and requests to participate to Jonathan McEntee, (ATTN: Jonathan McEntee, 245 Murray Lane SW., Washington, DC 20528–0075). Submit electronic comments and other data with the subject line ''RECONS Notice of Intent'' to *jonathan.mcentee@dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*Information on DHS CRADAs:* Marlene Owens, (202) 254–6671.

**SUPPLEMENTARY INFORMATION:**

### Background

Ensuring cargo security as it flows through supply chains is a challenge faced by industry and governments, both domestically and internationally. There is a need to identify illegal activity introduced into the supply chain while facilitating the flow of legal commerce.

A solution that provides greater security and facilitation of legal commerce is tracking the cargo conveyance as it moves through the supply chain and reporting any security breaches. The additional data is critical in assessing the risk level of cargo shipments and determining which shipments require more scrutiny rather than expedited processing.

### Operational Context

Each operation requiring conveyance security is slightly different and it is important to understand the environment in which they will be employed to ensure understanding of the unique characteristics.

*Centralized Examination Stations (CES) Operations:* Ports of entry (POEs) often are constrained in the physical space and resources available to conduct physical inspections at the facility. In order to prevent arriving conveyances awaiting inspection from negatively impacting the flow of shipments through the POEs, shipments selected for physical inspection are often directed to a facility (i.e. CES) located away from the POE. The shipments are secured with high security International Organization Standard (ISO) bolts while they are en route between the two facilities and legally remain within custody of CBP until they are cleared at the CES.

Using RECONS in CES Operations will increase security by providing tracking between the POE and CES and ensuring they do not deviate from the designated route and/or compromise the integrity of the conveyance and the shipment. In addition, using RECONS for repeated trips rather than single-use ISO bolts will automate processes resulting in cost savings and efficiencies in operations.

*In-bond Operations:* Duties are nominally assessed when a shipment

arrives at a POE and is then cleared to enter into U.S. commerce. Some shipments pass through the U.S. while in transit to another country and never enter the U.S. commerce. Additional shipments are allowed to travel within the U.S. and defer their payment of duties until they are entered into U.S. commerce at their formal port of entry. These shipments (in-bond shipments) are required to post a bond which CBP can collect against to insure the shipments do not enter U.S. commerce without paying the requisite duties. CBP secures some of these shipments with ISO bolts when they initially arrive at a U.S. POE and verifies the integrity of the ISO bolt when the shipment either exits the U.S. via a POE or enters U.S. commerce.

Using RECONS in In-bond Operations will allow for the collection of data that can be used to determine if any cargo was illegally off-loaded into U.S. commerce resulting in collecting against the insurance bond as well as serving as a deterrent to illegal activity. In addition, RECONS will automate processes leading to efficiencies while also saving money over time than employing single-use ISO bolts.

*National Capital Region (NCR) Secure Delivery:* Trucks making deliveries to buildings managed by GSA within the National Capital Region are first screened at a central facility and then secured with mechanical seals before delivering the cargo.

Using RECONS in NCR Secure Delivery Operations will increase security by providing tracking between the FPS scanning facility and the delivery and ensuring they do not deviate from the designated route to introduce illegal or dangerous cargo. The tracking data also verifies delayed deliveries and the reasons cited for arriving outside of the designated window thus avoiding the need for them to return to the FPS scanning facility to be re-inspected. In addition, RECONS will automate processes leading to efficiencies and cost savings.

*Cross-border Commerce:* Conveyance security extends beyond just CES, In-bond, and National Capital Region Secure Delivery within the Government, with other agencies such as DOE and DOD requiring conveyance security solutions.

There is a much larger need for conveyance security solutions for commercial cross-border commerce with over *$1 trillion* of goods being imported every year. Currently the only approved solutions are ISO bolts although there are much better solutions already in the commercial market. The impediment to adopting these enhanced solutions is they are not certified for use and the root cause of that is there is no standard to certify conveyance security solutions against.

The development of a RECONS Standard will be conducted by BMD in parallel with this project along with efforts to update CBP systems and policies to accept and use the data provided by RECONS for cross-border shipment processing. A spiral approach is being pursued with additional capabilities added to the RECONS Standard and CBP systems, supported by updated CBP policies, as the use of RECONS in cross-border operations evolves.

**Period of Performance**

If CRADA collaborator(s) is (are) selected, laboratory testing is expected to take 2 months. Contingent on laboratory testing, operational testing is expected to take an additional 6 months and data consolidation, analysis, and results finalization is expected to take another 3 months.

**Selection Criteria**

The Borders and Maritime Security Division (BMD) reserves the right to select CRADA collaborators for all, some, or none of the proposals in response to this notice. BMD will provide no funding for reimbursement of proposal development costs. Proposals (or any other material) submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified.

BMD will select proposals at its sole discretion on the basis of:

1. How well the proposal communicates the collaborators' understanding of and ability to meet the CRADAs goals and proposed timeline.

2. Ability of the collaborator to provide equipment and materials for proposed testing.

This includes the ability of the collaborator to provide a sufficient number of RECONS for laboratory and operational testing within two months of CRADA agreement.

3. Ability of the collaborator to invest in system and RECONS development costs to ensure interoperability with government system.

4. How well the proposal addresses the following criteria:

a. Ability of the collaborator to meet the requirements for development ,[1] validation testing and analysis, and submission of supporting data and documents fulfilling the RECONS laboratory and operational testing.

b. Ability of the collaborator to provide RECONS that are hardened to prevent tampering and have had environmental testing performed consistent with the operational conditions the RECONS will be employed.

c. Ability of the collaborator to provide documentation of the entire system required to operate RECONS and the all the associated costs throughout the lifecycle for procuring, operating, and maintaining RECONS.

d. Ability of the collaborator to provide RECONS that provide intrusion detection and tracking along with secure data exchanges, while maintaining a low false alarm and failure rate.

Participation in this CRADA does not imply the future purchase of any materials, equipment, or services from the collaborating entities, and non-Federal CRADA participants will not be excluded from any future BMD procurements based solely on their participation in this CRADA.

**Authority:** CRADAs are authorized by the Federal Technology Transfer Act of 1986, as amended and codified by 15 U.S.C. 3710a. DHS, as an executive agency under 5 U.S.C. 105, is a Federal agency for the purposes of 15 U.S.C. 3710a and may enter into a CRADA. DHS delegated the authority to conduct CRADAs to the Science and Technology Directorate and its laboratories.

Dated: November 21, 2013.

**Stephen Hancock,**

*Acting Director, Office of Public-Private Partnerships.*

[FR Doc. 2013–28531 Filed 11–27–13; 8:45 am]

BILLING CODE 9110–9F–P

[1] Development work may be needed to ensure solutions meet interoperability or other requirements validated through testing

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2013–0522]**

### Tank Vessel Oil Transfers

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice; reopening of comment period

**SUMMARY:** The Coast Guard issued a notice in the **Federal Register** of October 23, 2013, concerning new measures to reduce the risks of oil spills in oil transfer operations from or to a tank vessel. In response to public comments requesting an extension of the original comment period ending on November 22, 2013, the Coast Guard is reopening the comment period for an additional 30 days.

**DATES:** Comments must be received on or before December 30, 2013.

**ADDRESSES:** Submit comments using *one* of the listed methods, and see **SUPPLEMENTARY INFORMATION** for more information on public comments.

- *Online—http://www.regulations.gov* following Web site instructions.
- *Fax*—202–493–2251.
- *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.
- *Hand deliver*—mail address, 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–366–9329).

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email Ken Smith, Coast Guard; telephone 202–372–1413, email *Ken.A.Smith@uscg.mil.* For information about viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** This document reopens the comment period on the Coast Guard's October 23, 2013, notice (78 FR 63235) by an additional 30 days, in response to several public comments that requested an extension of the original comment period, which ended November 22, 2013. This notice is issued under authority of 5 U.S.C. 552(a).

Dated: November 21, 2013.

**F.J. Sturm,**

*Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. 2013–28584 Filed 11–27–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5684–N–06]**

## 60-Day Notice of Proposed Information Collection: Delta Community Capital Initiative Application and Semi-Annual Reporting

**AGENCY:** Office of Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* January 28, 2014.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Jackie L. Williams, Director, Office of Rural Housing & Economic Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Jackie Williams at *Jackie.Williams@hud.gov* telephone 202–402–4611. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

### A. Overview of Information Collection

*Title of Information Collection:* Delta Community Capital Initiative.

*OMB Approval Number:* N/A.

*Type of Request:* New.

*Form Numbers:* SF 424; HUD 424CB; HUD 424–CBW; SF–LLL; HUD 2880; HUD 2990; HUD 2991; HUD 2993; HUD 2994A; HUD 27061; and HUD 27300.

*Description of the need for the information and proposed use:* The purpose of this submission is for the application for the Appalachia Economic Development Initiative grant process. Information is required to rate and rank competitive applications and to ensure eligibility of applicants for funding. Semi-annual reporting is required to monitor grant management.

*Respondents:* Local rural nonprofit organization and federally recognized Indian tribes.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses:* 50.

*Frequency of Response:* 1.

*Average Hours per Response:* 56.2.

*Total Estimated Burdens:* 2,801.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| Per Respondent ..... | 1 | 1 | 1 | 56.02 | 37.5 | 25.00 | ..... |
| Total ..... | 50 | ..... | 1 | 56.02 | 2,801 | ..... | $937.50 |

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 21, 2013.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs Program.*

[FR Doc. 2013–28711 Filed 11–27–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5684–N–07]**

## 60-Day Notice of Proposed Information Collection: Appalachia Economic Development Initiative and Semi-Annual Reporting

**AGENCY:** Office of Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* January 28, 2014.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Jackie L. Williams, Director, Office of Rural Housing & Economic Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Jackie L. Williams at *Jackie.Williams@hud.gov* or telephone 202–402–4611. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

### A. Overview of Information Collection

*Title of Information Collection:* Appalachia Economic Development Initiative.

*OMB Approval Number:* N/A.

*Type of Request:* New.

*Form Numbers:* SF 424; HUD 424CB; HUD 424–CBW; SF–LLL; HUD 2880; HUD 2990; HUD 2991; HUD 2993; HUD 2994A; HUD 27061; and HUD 27300.

*Description of the need for the information and proposed use:* The purpose of this submission is for the application for the Appalachia Economic Development Initiative grant process. Information is required to rate and rank competitive applications and to ensure eligibility of applicants for funding. Semi-annual reporting is required to monitor grant management.

*Respondents:* Local rural nonprofit organization and federally recognized Indian tribes

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses:* 50.

*Frequency of Response:* 1.

*Average Hours per Response:* 56.2.

*Total Estimated Burdens:* 2,801.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| Per Respondent ..... | 1 | 1 | 1 | 56.02 | 37.5 | 25.00 | ..... |
| Total ..... | 50 | ..... | 1 | 56.02 | 2,801 | ..... | $937.50 |

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 21, 2013.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs Program.*

[FR Doc. 2013–28710 Filed 11–27–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5681–N–46]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were

reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Office of Enterprise Support Programs, Program Support Center, HHS, room 12–07, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; *Army:* Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, MS–4262, 1849 C Street, Washington, DC, 20240, (202) 513–0795; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; (These are not toll-free numbers).

Dated: November 21, 2013.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM**

**FEDERAL REGISTER REPORT FOR 11/29/2013**

**Suitable/Available Properties**

*Building*

California

Klamath National Forest
Equipment Warehouse; 4910006
538 Oak Knoll Rd.
Klamath CA 96050
Landholding Agency: Agriculture
Property Number: 15201340002
Status: Excess
Comments: off-site removal only; will need to dissemble to relate; 84+ yrs.-old; 2,273 sq. ft.; storage; lead paint; dropping; secured area; contact Agriculture for more info.

Imperial Dam Camp House #9
2400 Imperial Rd.
Bard CA 92222
Landholding Agency: Interior
Property Number: 61201340004
Status: Unutilized
Comments: off-site removal only; no future agency need; relocation may be difficult; 1,035 sq. ft.; residential; 32+ months vacant; poor conditions; asbestos/lead; contact Interior for more info.

Imperial Dam Camp House #1
2400 Imperial Rd.
Bard CA 92222
Landholding Agency: Interior
Property Number: 61201340005
Status: Unutilized
Comments: off-site removal; no future agency need; 792 sq. ft.; residential; poor conditions; major repairs/upgrades needed; asbestos/lead; contact Interior for more info.

Bldg. 2172
Marine Corps Air Ground Task
Force Training Command
Twentynine Palms CA 92278
Landholding Agency: Navy
Property Number: 77201340006
Status: Excess
Comments: off-site removal only; 756 sq. ft.; stored targets; 66+ yrs.-old; extensive exterior/interior wood damage; asbestos/lead; secured area; contact Navy for more info.

Bldg. 2175
Marine Corps Air Ground Task
Force Training Command
Twentynine Palms CA 92278
Landholding Agency: Navy
Property Number: 77201340007
Status: Excess
Comments: off-site removal only; 756 sq. ft.; stored targets; 66+ yrs.-old; extensive exterior/interior wood damage; asbestos/lead; secured area; contact Navy for more info.

Bldg. 5174
Marine Corps Air Ground Task
Force Training Command
Twentynine Palms CA 92278
Landholding Agency: Navy
Property Number: 77201340008
Status: Excess
Comments: off-site removal; 1,200 sq. ft.; 14+ yrs.-old; poor conditions; renovations needed; may contain asbestos; secured area; contact Navy for more info.

Bldg. 5771
Marine Corps Air Ground Task
Force Training Command
Twentynine Palms CA 92278
Landholding Agency: Navy
Property Number: 77201340009
Status: Excess
Comments: off-site removal only; 2,046 sq. ft.; 7+ yrs.-old; good conditions; located w/in airport runway clear zone; secured area; contact Navy for more info.

Massachusetts

12 Buildings

USCG Air Station Cape Cod
Bourne MA 02542
Landholding Agency: Coast Guard
Property Number: 88201340004
Status: Excess
Directions: 5645 (4,984 sq. ft.); 5602 (4,179 sq. ft.); 5601 (6,269 sq. ft.); 5443 (4,984 sq. ft.); 5441 (4,984 sq. ft.); 5425 (4,984 sq. ft.); 5415 (4,984 sq. ft.); 5413 (4,984 sq. ft.); 5364 (4,984 sq. ft.); 5331 (2,476 sq. ft.); 5317 (4,984 sq. ft.); 5316 (4,984 sq.)
Comments: off-site removal only; major repairs needed; units vacant; secured area; contact Coast Guard for more info. on a specific property & accessibility requirements

Tennessee

Bldg. 376
7943 Memphis AV
Millington TN
Landholding Agency: Navy
Property Number: 77201340010
Status: Unutilized
Directions: (includes fuel storage tanks 1756 & 1757)
Comments: off-site removal only; no future agency need; 264 sq. ft.; filling station; deteriorated; secured area; contact Navy for more info.

Virginia

Tract 01–114; Large Shed
Cedar Creek & Belle Grove National Historical Park; 621 Bowman's Mill Rd.
Middletown VA 22645
Landholding Agency: Interior
Property Number: 61201340003
Status: Excess
Comments: off-site removal only; 200 sq. ft.; 10+ yrs. vacant; poor conditions; wood structure; attempt to relocate will likely result in a complete collapse of the structure

**Unsuitable Properties**

*Building*

California

Building 178
Defense Distribution San Joaquin, Sharpe Site
700 E Roth Road
San Joaquin CA 95231
Landholding Agency: Army
Property Number: 21201340024
Status: Unutilized
Directions: 178
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Imperial Dam Camp House #10
2400 Imperial Rd.
Bard CA 92222
Landholding Agency: Interior
Property Number: 61201340008
Status: Unutilized
Comments: Document deficiencies; on 05/03/2012 bldg. was destroyed by fire; unsalvageable; presents a clear threat to personal safety
Reasons: Extensive deterioration

Iowa

4 Buildings
Iowa Army Ammunition Plant
Middletown IA 52601
Landholding Agency: Army
Property Number: 21201340034
Status: Unutilized
Directions: 0023A, 00128, 00153, 05213
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Missouri

15 Buildings
Camp Clark MOARING
Nevada MO 64772
Landholding Agency: Army
Property Number: 21201340003
Status: Unutilized
Directions: H0001, H0002, H0003, H0004, H0005, H00006, H0007, H0008, H0009, H0010, H0011, H0012, H0013, H0015, H0016
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

North Carolina

2 Building
FT Bragg
FT Bragg NC 28310
Landholding Agency: Army
Property Number: 21201340006
Status: Underutilized
Directions: 41571, 42472
Comments: Public access denied and no alternative to gain access without compromising national security.
Reasons: Secured Area

A4638
FT Bragg
FT Bragg NC 28310
Landholding Agency: Army
Property Number: 21201340007
Status: Underutilized
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Tennessee

4 Buildings
Milan AAP
Milan TN 38358
Landholding Agency: Army
Property Number: 21201340035
Status: Excess
Directions: I0205; I0206; I0209; T0114
Comments: Public access denied & no alternative method to gain access without compromising National Security.
Reasons: Secured Area

Virginia

T1810
Fort Pickett Training Center
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201340022
Status: Unutilized
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

*Land*

Colorado

1.5 Acres
Navajo Unit
Navajo CO
Landholding Agency: Interior
Property Number: 61201340006
Status: Excess
Comments: landlocked; can only access by crossing private property where there is no established right or means of entry.
Reasons: Not accessible by road

0.23 Acres
Mancos Project
Mancos CO
Landholding Agency: Interior
Property Number: 61201340007
Status: Excess
Comments: Landlocked; can only access by crossing private property where there is no established right or means of right or means of entry.
Reasons: Not accessible by road

[FR Doc. 2013–28378 Filed 11–27–13; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–MB–2013–N264; 91100–3740–GRNT 7C]**

### Meeting Announcement: North American Wetlands Conservation Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public, and interested persons may present oral or written statements.

**DATES:** *Council:* Meeting is December 10, 2013, 8:30 a.m. to 4:00 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than November 26, 2013.

**ADDRESSES:** The Council meeting will be held at the Omni Hotel, 900 N Shoreline Blvd., Corpus Christi, TX 78401.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Perry, Council Coordinator, by phone at (703) 358–2432; by email at *dbhc@fws.gov;* or by U.S. mail at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MBSP 4075, Arlington, VA 22203.

**SUPPLEMENTARY INFORMATION:**

### Background

In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider

wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA.* Proposals require a minimum of 50 percent non-Federal matching funds. If you are interested in presenting information or submitting questions for this public meeting, contact the Council Coordinator no later than November 26, 2013.

**Meeting**

The Council will consider Mexican standard grant and U.S. standard grant proposals at the meeting. The Commission will consider the Council's recommendations at its meeting tentatively scheduled for March 12, 2014.

**Public Input**

| If you wish to: | You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than |
|---|---|
| (1) Attend the Council meeting | December 9, 2013. |
| (2) Submit written information or questions before the Council meeting for consideration during the meeting | November 26, 2013. |
| (3) Give an oral presentation during the Council meeting | November 26, 2013 |

*Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. If you wish to submit a written statement, so that the information may be made available to the Council for their consideration prior to this meeting, you must contact the Council Coordinator by the date above. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Giving an Oral Presentation*

Individuals or groups requesting to make an oral presentation at the Council meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator by the date above, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for either of these meetings. Nonregistered public speakers will not be considered during the Council meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, are invited to submit written statements to the Council within 30 days following the meeting.

**Meeting Minutes**

Summary minutes of the Council and meeting will be maintained by the Council Coordinator at the address under **FOR FURTHER INFORMATION CONTACT**. Council meeting minutes will be available by contacting the Council Coordinator within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

**Jerome Ford,**

*Assistant Director, Migratory Birds.*

[FR Doc. 2013–28585 Filed 11–27–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## U.S. Geological Survey

## Announcement of National Geospatial Advisory Committee Meeting

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** The National Geospatial Advisory Committee (NGAC) will meet on December 11, 2013, from 1:00 p.m. to 5:00 p.m. EST. The meeting will be held via web conference and teleconference.

The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, has been established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Leadership Dialogue
—FGDC Update
—NSDI Strategic Plan
—Subcommittee Updates

Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703–648–6283, *amaher@fgdc.gov*). Meeting registrations are due by December 6, 2013. Meeting information (web conference and teleconference instructions) will be provided to registrants prior to the meeting. While the meeting will be open to the public, attendance may be limited due to web conference and teleconference capacity.

The meeting will include an opportunity for public comment. Attendees wishing to provide public comment should register by December 6. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703–648–6283, *amaher@fgdc.gov*). Comments may also be submitted to the NGAC in writing.

**DATES:** The meeting will be held on December 11, 2013, from 1:00 p.m. to 5:00 p.m. e.s.t.

**FOR FURTHER INFORMATION CONTACT:** John Mahoney, U.S. Geological Survey (206–220–4621).

**SUPPLEMENTARY INFORMATION:** Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at *www.fgdc.gov/ngac.*

Dated: November, 18, 2013.

**Ivan DeLoatch,**

*Executive Director, Federal Geographic Data Committee.*

[FR Doc. 2013–28509 Filed 11–27–13; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[AAK6006201 134A2100DD AOR3B3030.999900]**

### Final Environmental Impact Statement for the Soboba Band of Luiseno Indians' Proposed 534-Acre Trust Acquisition and Casino Project, Riverside County, California

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the City of San Jacinto and the Environmental Protection Agency (EPA) as cooperating agencies, intends to file a final environmental impact statement (FEIS) with the EPA for the Soboba Band of Luiseno Indians' (Tribe) proposed fee-to-trust acquisition and hotel/casino project to be located in Riverside County, California. This notice also announces that the FEIS is now available for public review.

**DATES:** The Record of Decision on the application will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the **Federal Register**. Any comments on the FEIS must arrive on or before that date.

**ADDRESSES:** Mail or hand carry written comments to Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. See **SUPPLEMENTARY INFORMATION** for directions on submitting comments and the public availability of the FEIS.

**FOR FURTHER INFORMATION CONTACT:** John Rydzik, (916) 978–6051, or at *john.rydzik@bia.gov.*

**SUPPLEMENTARY INFORMATION:** The Tribe has requested the BIA to acquire into trust 34 parcels totaling 534.91+/− acres of land currently held in fee by the Tribe, of which the Tribe proposes to develop approximately 55 acres into a destination hotel/casino complex (Proposed Action). Approximately 300 acres (56 percent) of the project site is incorporated in the City of San Jacinto, California, while the remainder is within unincorporated Riverside County, California. The proposed hotel and casino complex would be generally located at the intersection of Soboba Road and Lake Park Drive, in Riverside County and abut the existing Soboba Springs Country Club.

The Tribe proposes to relocate its existing casino, which presently resides on trust lands, to the project site. In addition to the fee-to-trust action and casino relocation, the Proposed Action also includes the development of a 300-room hotel, casino, restaurants, retail establishments, a convention center, an events arena, and a spa and fitness center, within a 729,500+/− square-foot complex. The Proposed Action also includes a Tribal fire station, and a 12-pump gas station with a 6,000 square-foot convenience store.

In addition to the Proposed Action described above, the FEIS included the following alternatives: (1) Reduced Hotel/Casino Complex, (2) Hotel and Convention Center with No Casino Relocation, (3) Commercial Enterprise with No Casino or Hotel, and (4) No Action Alternative. The BIA must conduct a complete evaluation of the criteria listed in 25 CFR part 151 prior to making a final decision. The BIA may, in its Record of Decision, select an alternative other than the Proposed Action, including the No Action Alternative or another alternative analyzed in the FEIS.

Environmental issues addressed within the FEIS included land resources, water resources, air quality, biological resources, cultural/paleontological resources, economic and socioeconomic conditions, transportation, land use, agriculture, public services, hazardous materials, noise, visual resources, and recreational resources. The FEIS examines the direct, indirect, and cumulative effects of each alternative on these resources. Mitigation measures to address adverse impacts are also identified in the FEIS.

The BIA has afforded other government agencies and the public opportunities to participate in the preparation of this EIS. On December 12, 2007, the BIA sent out cooperating agency letters to various agencies, of which the City of San Jacinto and the EPA agreed to participate. The BIA published a Notice of Intent in the **Federal Register** on December 14, 2007, describing the Proposed Action, announcing the BIA's intent to prepare an EIS for the Proposed Action, and inviting comments. The public comment period was extended to January 25, 2008, to ensure that all parties had an opportunity to submit comments; however, comments received after this deadline and until March 11, 2008, were accepted. The BIA held a public hearing on January 8, 2008, at the Hemet Public Library. Prior to public circulation, an administrative version of the Draft EIS was circulated to the cooperating agencies (EPA and City of San Jacinto) for review and comment. Comments were taken into consideration and changes were made based on these comments before the public release of the document. The Notice of Availability of the Draft EIS was published in the **Federal Register** on July 2, 2009. A public hearing was held in the City of Hemet on August 5, 2009. Approximately 250 comments were received during the comment period, including those submitted or recorded at the public hearing. Comments were considered in the preparation of the FEIS; responses to the comments are included in Appendix E of the FEIS and relevant information was revised in the FEIS as appropriate to address those comments.

*Locations where the FEIS is Available for Review:* The FEIS is available for public review at the San Jacinto Public Library, 500 Idyllwild Drive, San Jacinto, California 92583, telephone (951) 654–8635; and the Hemet Public Library, 2nd Floor, 300 E. Latham, Hemet, California 92543, telephone (951) 765–2440. An electronic version of the FEIS can also be viewed at the following Web site: *http://www.soboba-nsn.gov.*

*Directions for Submitting Comments:* Please include your name, return address, and the caption, ''''FEIS Comments, Soboba Horseshoe Grande Fee-to-Trust Project'' on the first page of your written comments and submit comments to the BIA address listed in the **ADDRESSES** section of this notice.

To obtain a compact disk copy of the FEIS, please provide your name and address in writing or by voicemail to John Rydzik, Chief of the Division of Environmental, Cultural Resources Management and Safety, at the address listed in the **ADDRESSES** section of this notice, or at the telephone number listed in the **FOR FURTHER INFORMATION CONACT** section of this notice. Note that individual paper copies of the FEIS will be provided only upon payment of applicable printing expenses by the requestor for the number of copies requested.

*Public Comment Availability:* Comments, including the names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section, during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. Before including your address, telephone 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 may 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:** This notice is published in accordance with the Council on Environmental Quality regulations (40 CFR part 1500 et seq.) and the Department of the Interior regulations (43 CFR part 46) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), and is accordance with the exercise of authority delegated to the Assistant Secretary-Indian Affairs by part 209 of the Departmental Manual.

Dated: November 12, 2013.

**Kevin Washburn,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2013–28444 Filed 11–27–13; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAD08000, L51010000.FX0000.LVRWB09B3130]**

### Notice of Availability of the Draft Joint Environmental Impact Statement and Environmental Impact Report and California Desert Conservation Area Plan Amendment for the Proposed Soda Mountain Solar Project, San Bernardino County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) and California Desert Conservation Area (CDCA) Plan Amendment for the Soda Mountain Solar Project (Project), San Bernardino County, California, and by this notice is announcing the opening of the comment period.

**DATES:** To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS/EIR and Draft CDCA Plan Amendment within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register.** The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

**ADDRESSES:** You may submit comments related to the Soda Mountain Solar Project Draft EIS/EIR and Draft CDCA Plan Amendment by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/cdd.html.*
- *Email: sodamtnsolar@blm.gov.*
- *Fax:* 951–697–5299, Attn: Jose M. Najar.
- *Mail:* California Desert District Office, Attn: Jose M. Najar, 22835 Calle San Juan de los Lagos, Moreno Valley, CA 92553.

Copies of the Soda Mountain Solar Project Draft Joint EIS/EIR and CDCA Plan Amendment are available in the California Desert District Office at the above address and at the Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311.

**FOR FURTHER INFORMATION CONTACT:** Jose M. Najar, Project Manager, telephone 951–697–5387; address 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553; email *sodamtnsolar@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM has received a right-of-way (ROW) application from Soda Mountain Solar, LLC, to construct, operate, maintain, and decommission a solar photovoltaic (PV) power plant facility proposed on 4,179 acres with solar fields occupying approximately 2,557 acres of BLM-administered public lands in San Bernardino County, California. The Project would utilize solar panels and would be built in several phases. The Project would connect to the existing Los Angeles Department of Water and Power 500kV transmission line to the west of the project using a transmission interconnect from the proposed substation. The Project would not require any expansion of the existing transmission line or any upgrades.

The Project would be adjacent to Interstate 15 (I–15), South of Blue Bell Mine Road, about 6 miles southwest of Baker, California, and 12 miles northeast of Barstow, California.

The proposed project site is located near the National Park Service's Mojave National Preserve, Soda Mountain and Cady Mountains Wilderness Study Areas, and the Rasor Off Highway Vehicle and Afton Canyon Special Recreation Management Areas within the BLM's CDCA. A portion of the Blue Bell Mine Road lies north adjacent to the project site at its closest point, and runs approximately east to west.

All proposed project components would be located on BLM-administered lands subject to a ROW grant. The proposed Project components would include solar array fields; access roads; collector lines; a substation with switchyard and interconnection; ancillary buildings; six groundwater production, test, and observation water wells; water tanks; a water treatment and storage facility; brine ponds; warehouses; fencing; berms; other infrastructure; and laydown areas. The existing roads would provide access to the proposed project site. New minor internal roads would be constructed among collector lines, substation, arrays and sub arrays, and other ancillary facilities. The interconnection to the proposed substation and collector lines from the arrays would be via underground trench, including underground trenching of I–15. Once approved and operational, the proposed Project is expected to have up to 358 megawatts of generating capacity. In connection with its decision on the proposed Soda Mountain Solar project, the BLM will also include consideration of potential amendments to the CDCA land use plan, as analyzed in the Draft EIS/EIR alternatives. The CDCA plan, while recognizing the potential compatibility of solar energy facilities on public lands, requires that all sites associated with power generation or transmission not identified in the Plan be considered through the land use plan amendment process. The BLM is deciding whether to amend the CDCA Plan to identify the Soda Mountain Solar project site as available or unavailable for solar development.

The Draft EIS/EIR describes the following six alternatives: Alternative A: The Proposed Action—358 MW on 2,557 acres; Alternative B: 264 MW project on 2,127 acres; Alternative C: 298 MW project on 2,354 acres; Alternative D: 250 MW project on 2,134 acres; Alternative E: No action alternative/no project approval—no issuance of a ROW Grant, no county approval of a groundwater well permit, no Land Use Plan (LUP) amendment; Alternative F: BLM approves project with no county approval of a groundwater well permit; and, Alternative G: Planning decision identifying the area as unsuitable for solar, with no BLM ROW—LUP Plan Amendment (PA), no issuance of a ROW Grant, and no county approval of a groundwater well permit. All of the action alternatives, except Alternative E, would include an amendment to the CDCA Plan. Alternative A is the preferred alternative in the Draft EIS.

The issues analyzed in the Draft EIS include the physical, biological, cultural, socioeconomic, and other resources that have the potential to be affected by the proposed project and alternatives. In addition, the Bureau of Land Management (BLM) is analyzing impacts on air quality, greenhouse gas emissions and climate change; geology and soils; hazards and hazardous materials; fire and fuels; water resources, hydrology and water quality; land use, lands and realty; noise; recreation; traffic; visual resources; paleontological resources; public health and safety; lands with wilderness characteristics; socioeconomics and environmental justice; special designations; transportation and public access; cumulative effects, pre and post construction and operations; and areas with high potential for renewable energy development.

The BLM will host one or more public meetings, to be announced separately, which will be held to allow oral or written comments to be presented to the lead agencies. Please see BLM's Web page at *http://www.blm.gov/ca/st/en/fo/barstow/renewableenergy/soda_mountain.html* for information about the location, date, and time of any such meeting.

All substantive issues raised during the comment period will be considered, and modifications may be made to develop the Final PA/EIS/EIR based on these comments. Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

**Thomas Pogacnik,**

*Deputy State Director, Natural Resources, BLM California.*

[FR Doc. 2013–28506 Filed 11–27–13; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[12X.LLAZG01000.L71220000.EU0000. LVTFA1258570 241A; AZA–35682]**

### Notice of Realty Action: Direct Sale of Public Land in Graham County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM), Safford Field Office (SFO), is considering a noncompetitive direct sale of approximately 15 acres of public land in Graham County, Arizona, to Gilligan and Blanca Bowman (proponents) for not less than the appraised fair market value (FMV).

**DATES:** In order to ensure consideration in the environmental analysis of the proposed sale, the BLM must receive comments by January 13, 2014.

**ADDRESSES:** Written comments concerning the proposed direct sale should be sent to Scott Cooke, Field Manager, BLM Safford Field Office, 711 14th Avenue, Safford, AZ 85546.

**FOR FURTHER INFORMATION CONTACT:** Ron Peru, Realty Specialist, at the above address, or phone 928–348–4439. 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 following described parcel of public land in Graham County, Arizona, is being considered for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713 and 1719) and the regulations at 43 CFR subparts 2710 and 2720:

**Gila and Salt River Meridian, Arizona**

Township 7 South, Range 27 East, sec. 8, S1/2SW1/4NE1/4SW1/4 and SE1/4NE1/4SW1/4,

The area described contains approximately 15 acres.

Consistent with Section 203 of FLPMA, a tract of public land may be sold where, as a result of land use planning, sale of the tract meets the disposal criteria of that section.

The public lands described above were identified as suitable for disposal by the BLM Safford District Resource Management Plan in August 1991. The parcel is not needed for any other Federal purpose and has become difficult and uneconomical to manage due to public lands in Sections 7 and 8 being encumbered on three sides by private land.

The regulations found at 43 CFR 2710.0–3(a) and 43 CFR 2711.3–3(a)(5) permit the BLM to make direct sales of public lands when a competitive sale is not appropriate and the public interest would be best served by a direct sale. The regulations at 43 CFR 2711.3–3(a)(5) permit direct sales to occur to resolve inadvertent unauthorized use or occupancy of the lands.

With respect to the lands above, there is an inadvertent unauthorized occupancy on the land that consists of an access road and buildings associated with a residence.

The unauthorized developments have been in place for approximately 10 years. The proponents of the direct sale wish to purchase the parcel to resolve this inadvertent unauthorized occupancy, and the BLM has concluded that the public interest would be best served by a direct sale of those lands. No significant biological and cultural resource values have been identified on the lands in questions. As a result, there are no impacts to resource values that are expected from this action. The BLM prepared a mineral potential report, dated June 22, 2012, and the lands identified for sale have no known mineral value. The BLM proposes that the conveyance of the Federal mineral interest occur simultaneously with the sale. The proponents will be required to pay a $50 non-refundable filing fee in conjunction with the final payment for processing of the conveyance of the mineral interests. The project is not expected to affect the San Carlos Indian Reservation located about 12 miles away. In addition to this Notice of Realty Action (NORA), notice of this sale will also be published once a week for 3 weeks in the Eastern Arizona Courier.

Pursuant to the requirements of 43 CFR 2711.1–2(d), upon publication of this notice in the **Federal Register**, the lands identified above will be segregated from all appropriation under the public land laws, including the mining laws. Upon publication of this NORA, and until completion of the sale, the BLM will no longer accept land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 43 CFR 2886.15. This segregation will terminate upon issuance of a patent, publication in the

**Federal Register** of a termination of the segregation, or November 30, 2015, whichever comes first unless extended by the BLM Arizona State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The following terms and conditions would appear as reservations to the United States on the conveyance document for this parcel:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);
2. Right-of-way AZAR–02060 is reserved for a water pipeline granted to the City of Safford, its successors or assigns, pursuant to the Act of February 15, 1901 (43 U.S.C. 959);
3. Right-of-way AZA–9015 is reserved for a transmission line granted to Southwest Transmission Cooperative, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and
4. Additional terms and conditions that the authorized officer deems appropriate.

A map delineating the proposed direct sale parcel and Mineral Potential Report are available for public review at the BLM SFO, which is located at the address above. Upon receipt of an approved appraisal, publication of a subsequent NORA will include the FMV for the sale parcel and will be available for review 60 days prior to the sale date. An environmental assessment (EA) is being prepared for the proposed direct sale. When completed, the EA will be available for review at the address above.

Public comments concerning the proposed direct sale may be submitted in writing to the attention of the BLM Safford Field Manager at the address above. Comments, including names and street addresses of respondents, will be available for public review at the BLM SFO during regular business hours. 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 may ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Any comments regarding the proposed direct sale will be reviewed by the BLM Safford Field Manager or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior not less than 60 days from November 29, 2013.

**Authority:** 43 CFR 2711.1–2, 43 CFR 2720.1–1(b)

**Scott C. Cooke,**

*BLM Safford Field Manager.*

[FR Doc. 2013–28617 Filed 11–27–13; 8:45 am]

**BILLING CODE 4310–32–P**

---

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]**

### Notice of Proposed Information Collection; Request for Comments for 1029–0024

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for the Procedures and Criteria for Approval or Disapproval of State Program Submissions.

**DATES:** Comments on the proposed information collection must be received by January 28, 2014, to be assured of consideration.

**ADDRESSES:** Mail comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or via email at *jtrelease@osmre.gov*.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. OSM will be requesting that the Office of Management and Budget extend its approval for the collection of information for 30 CFR part 732.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for these information collection activities.

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 number for part 732 is 1029–0024, and may be found in OSM's regulations at 30 CFR 732.10.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* 30 CFR Part 732—Procedures and Criteria for Approval or Disapproval of State Program Submissions.

*OMB Control Number:* 1029–0024.

*Summary:* Part 732 establishes the procedures and criteria for approval and disapproval of State program submissions. The information submitted is used to evaluate whether State regulatory authorities are meeting the provisions of their approved programs.

*Bureau Form Number:* None.

*Frequency of Collection:* Once and annually.

*Description of Respondents:* 24 State and 4 Tribal regulatory authorities.

*Total Annual Responses:* 40.

*Total Annual Burden Hours:* 6,775.

Dated: November 25, 2013.

**Andrew F. DeVito,**

*Chief, Division of Regulatory Support.*

[FR Doc. 2013–28644 Filed 11–27–13; 8:45 am]

**BILLING CODE 4310–05–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–883]**

### Certain Opaque Polymers; Notice of Commission Decision Amending the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 8) amending the complaint and notice of investigation in the above-captioned investigation. The amended complaint and notice of investigation add a new claim of trade secret misappropriation against the respondents.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or 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 *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 21, 2013, based on a complaint filed by the Dow Chemical Company of Midland, Michigan, and by Rohm and Haas Company and Rohm and Haas Chemicals LLC, both of Philadelphia, Pennsylvania. 78 *FR* 37571 (June 21, 2013). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, by reason of the infringement of certain claims from four United States Patents. The notice of institution named five respondents: Organik Kimya Sa. ve Tic. A.Ş of Istanbul, Turkey; Organik Kimya Netherlands B.V. of Rotterdam-Botlek, Netherlands; Organik Kimya US, Inc. of Burlington, Massachusetts; Turk International LLC of Aptos, California; and Aalborz Chemical LLC d/b/a All Chem of Grand Rapids, Michigan.

On October 17, 2013, the complainants moved to amend the complaint and notice of investigation to add a new claim of trade secret misappropriation against the respondents. On October 28, 2013, the respondents opposed the motion, and on October 30, 2013, the complainants filed a motion for leave to file an attached reply.

On November 7, 2013, the ALJ granted the motion as an ID. Order No. 8. No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.14 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.14, 210.42).

By order of the Commission.

Issued: November 25, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–28708 Filed 11–27–13; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–853]**

### Certain Wireless Consumer Electronics Devices and Components Thereof; Commission Determination To Review in Part A Final Initial Determination Finding No Violation of Section 337; Extension of Target Date

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrate law judge's (''ALJ'') final initial determination (''ID'') finding no violation of Section 337 in the above-referenced investigation. The Commission has also determined to extend the target date for completion of this investigation to January 29, 2014.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or 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 *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on August 24, 2012, based on a complaint filed by Technology Properties Limited LLC and Phoenix Digital Solutions LLC, both of Cupertino, California; and Patriot Scientific Corporation of Carlsbad, California (collectively ''Complainants''). 77 FR 51572–573 (August 24, 2012). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless consumer electronics devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,809,336 (''the '336 patent''). The Commission's notice of investigation named the following as respondents: Acer, Inc. of Taipei, Taiwan and Acer America Corporation of San Jose, California (collectively ''Acer''); Amazon.com, Inc. of Seattle, Washington (''Amazon''); Barnes and Noble, Inc. of New York, New York (''B&N''); Garmin Ltd of Schaffhausen, Switzerland, Garmin International, Inc. of Olathe, Kansas, and Garmin USA, Inc. of Olathe, Kansas (collectively ''Garmin''); HTC Corporation of Taoyuan, Taiwan and HTC America of Bellevue, Washington (collectively ''HTC''); Huawei Technologies Co, Ltd. of Shenzhen, China (''Huawei Tech.''); Huawei North America of Plano, Texas (''Huawei NA''); Kyocera Corporation of Kyoto, Japan and Kyocera Communications, Inc. of San Diego, California (collectively ''Kyocera''); LG Electronics, Inc. of Seoul, Korea and LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey (collectively ''LG''); Nintendo Co. Ltd. of Kyoto, Japan and Nintendo of America, Inc. of Redmond, Washington (collectively ''Nintendo''); Novatel Wireless, Inc. of San Diego, California (''Novatel''); Samsung Electronics Co., Ltd., of Seoul, Korea

and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey (collectively ''Samsung''); Sierra Wireless, Inc. of British Columbia, Canada and Sierra Wireless America, Inc. of Carlsbad, California (collectively ''Sierra''); and ZTE Corporation of Shenzhen, China and ZTE (USA) Inc. of Richardson, Texas (collectively ''ZTE''). The Office of Unfair Import Investigations was named as a participating party.

On February 4, 2013, the Commission terminated the investigation with respect to Sierra. Notice (Feb. 4, 2013); see Order No. 17 (Jan. 15, 2013). On February 15, 2013, the Commission issued a notice indicating that the Notice of Investigation had been amended to remove Huawei NA as a respondent and to add Huawei Device Co., Ltd. of Shenzhen, China; Huawei Device USA Inc. of Plano, Texas; and Futurewei Technologies, Inc. d/b/a Huawei Technologies (USA) of Plano, Texas as respondents. Notice (Feb. 15, 2013); see Order No. 14 (Jan. 8, 2013).

On August 23, 2013, Complainants and respondent Kyocera filed a joint motion to terminate the investigation with respect to Kyocera on the basis of a portfolio licensing agreement entered into between those parties. On August 23, 2013, Complainants and Kyocera filed a revised joint motion to indicate the positions of the other parties. On September 9, 2013, the ALJ issued a notice indicating that, because the final deadline for responses to the revised motion was not due to occur until after he had already issued the final ID, the motions were pending before the Commission. Notice (Sept. 9, 2013). On September 20, 2013, the Commission granted a joint motion to terminate the investigation as to Kyocera based on the settlement agreement. Notice (Sept. 20, 2013).

On September 6, 2013, the ALJ issued his final initial determination (''ID''), finding no violation of Section 337 with respect to all of the named respondents. Specifically, the ALJ found that the importation requirement of Section 337 is satisfied. The ALJ also found that none of the accused products directly or indirectly infringe the asserted claims of the '336 patent. The ALJ further found that the asserted claims of the '336 patent have not been found to be invalid. The ALJ also found that respondents have not shown that the accused LG product is covered by a license to the '336 patent. The ALJ further found that Complainants have satisfied the domestic industry requirement pursuant to 19 U.S.C. 1337(a)(3)(C) for the '336 patent because Complainants' licensing activities have a nexus to the '336 patent and because Complainants' licensing investments with respect to the '336 patent are substantial. The ALJ also found that there are no public interest issues that would preclude issuance of a remedy were the Commission to find a violation of section 337. The ALJ also issued a recommended determination, recommending that the appropriate remedy is a limited exclusion order barring entry of infringing wireless consumer electronics devices and components thereof against the active respondents. The ALJ did not recommend issuance of a cease and desist order against any respondent. The ALJ also did not recommend the imposition of a bond during the period of Presidential review. On September 12, 2013, the ALJ issued a Notice of Clarification supplementing the Final ID. Notice of Clarification Regarding Final Initial Determination (Sept. 12, 2013).

On September 17, 2013, Complainants and Amazon filed a joint motion to terminate Amazon from the investigation based on a settlement agreement. Also on September 17, 2013, Complainants and Acer filed a joint motion to terminate Acer from the investigation based on a settlement agreement. On September 24, 2013, the Commission investigative attorney (''IA'') filed individual responses to each joint motion, supporting the motions to terminate Amazon and Acer based on settlement.

On September 23, 2013, Complainants filed a petition for review of certain aspects of the final ID as concern asserted claims 6 and 13 of the '336 patent. In particular, Complainants request that the Commission review the ID's construction of the ''entire oscillator'' terms recited in claims 6 and 13 and the ID's infringement findings based on those limitations. Complainants also request that the Commission review the ID's infringement findings concerning the limitations ''varying,'' ''independent,'' and ''asynchronous'' recited in claims 6 and 13. Also on September 23, 2013, the remaining Respondents who had not settled with Complainants filed a contingent petition for review of certain aspects of the final ID. In particular, Respondents request review of the ID's finding that Complainants have satisfied the domestic industry requirement based on licensing activities. On October 17, 2013, Respondents filed a response to Complainants' petition for review. Also on October 17, 2013, Complainants filed a response to Respondents' contingent petition for review. Further on October 17, 2013, the IA filed a joint response to the private parties' petitions.

Also on October 17, 2013, Complainants' filed a post-RD statement on the public interest pursuant to Commission Rule 201.50(a)(4). On October 23, 2013, Respondents also filed a submission pursuant to the rule. No responses from the public were received in response to the post-RD Commission Notice issued on September 9, 2013. See Notice of Request for Statements on the Public Interest (Sept. 9, 2013).

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part with respect to the ID's findings concerning claim construction and infringement of claims 6 and 13 of the '336 patent.

As to the accused products listed at page 88 of the ID and products containing these chips, the Commission has determined not to review the ID's finding that Complainants have failed to satisfy their burden of proof with respect to infringement of claims 6 and 13.

Regarding the ID's finding of domestic industry, the Commission has determined to review the ID to consider the question of whether the alleged industry still exists in light of TPL's relinquishing its right to license the '336 patent. The Commission has also determined to review the ID's domestic industry finding to consider whether Complainants have satisfied the economic prong of the domestic industry requirement. The Commission has further determined to review the ID's statement that Complainants need not show that at least one of their licensees practices the patent(s)-in-suit to demonstrate a license-based domestic industry. See ID at 296 (Public Ver.) (Oct. 24, 2013).

The Commission has determined not to review the remaining issues decided in the final ID.

The Commission has also determined to grant the joint motions to terminate the investigation as to Amazon and Acer based on settlement.

In connection with its review, the parties are requested to brief their positions on the following questions:

1. With respect to the Accused Products using so-called ''current-starved technology,'' specifically identify which accused chips are implicated, cite to the relevant evidence in the record, and discuss whether those products satisfy the ''entire oscillator'' limitation of claims 6 and 13 of the '336 patent.

2. With respect to Complainants' alleged licensed-based domestic industry, is there a continuing revenue stream from the existing licenses and is the licensing program ongoing? If the licensing program is ongoing, which complainant(s) is/are investing in the program and what is the nature (not amounts) of those investments?

3. Please describe the claimed expenditures for patent prosecution and litigation and explain how they relate to Complainants' domestic industry in licensing the '336 patent. Please provide an estimate of the proportion of the total claimed investments in licensing the '336 patent accounted for by the claimed patent prosecution and litigation expenditures.

4. Discuss, in light of the statutory language, legislative history, the Commission 's prior decisions, and relevant court decisions, including *InterDigital Communications, LLC* v. *ITC,* 690 F.3d 1318 (Fed. Cir. 2012), 707 F.3d 1295 (Fed. Cir. 2013) and *Microsoft Corp.* v. *ITC,* Nos. 2012–1445 & -1535, 2013 WL 5479876 (Fed. Cir. Oct. 3, 2013), whether establishing a domestic industry based on licensing under 19 U.S.C. 1337(a)(3)(C) requires proof of ''articles protected by the patent'' (i.e., a technical prong). Assuming that is so, please identify and describe the evidence in the record that establishes articles protected by the asserted patents.

The parties have been invited to brief only the discrete issues described above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury.

*Written Submissions:* The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, the Office of Unfair Import Investigations, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding and the ALJ's recommendation regarding the public interest. Complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on December 23, 2013. Initial submissions are limited to 50 pages, not including any attachments or exhibits related to discussion of the public interest. Reply submissions must be filed no later than the close of business on December 30, 2013. Reply submissions are limited to 25 pages, not including any attachments or exhibits related to discussion of the public interest. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–853'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The target date for completion of this investigation is extended to January 29, 2014.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.
Issued: November 25, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–28717 Filed 11–27–13; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

**[Docket No. OAG 144; AG Order No. 3408–2013]**

### Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence

**AGENCY:** Office of the Attorney General, Justice.

**ACTION:** Final notice; solicitation of applications for pilot project.

**SUMMARY:** This final notice establishes procedures for Indian tribes to request designation as participating tribes under section 204 of the Indian Civil Rights Act of 1968, as amended, on an accelerated basis, under the voluntary pilot project described in the Violence Against Women Reauthorization Act; establishes procedures for the Attorney General to act on such requests; and solicits such requests from Indian tribes.

**DATES:** This final notice is effective November 29, 2013.

**ADDRESSES:** Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW, Room 2310, Washington, DC 20530, email *OTJ@usdoj.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Tracy Toulou, Director, Office of Tribal

Justice, Department of Justice, at (202) 514–8812 (not a toll-free number) or *OTJ@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:**

Section 908(b)(2) of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) establishes a voluntary pilot project for Indian tribes that wish to commence exercising jurisdiction on an accelerated basis over certain crimes of domestic violence and dating violence and certain criminal violations of protection orders in Indian country. This final notice establishes procedures for tribes to request designation as a participating tribe under the Pilot Project. A tribe may make such a request at any time prior to March 7, 2015, by submitting a completed Application Questionnaire, along with any attachments, by email (or, if necessary, by mail) to the Office of Tribal Justice, Department of Justice.

The Department of Justice will give the same priority consideration to any tribal request that it receives within 30 days after publication of this final notice in the **Federal Register**, regardless of the precise date within that initial 30-day period on which a tribe makes its request. Soon after that 30-day period has expired, the Department of Justice will begin reviewing each requesting tribe's Application Questionnaire, including attached excerpts of tribal laws, rules, and policies. After coordinating with the Department of the Interior and consulting with affected tribes, the Department of Justice will determine whether the requesting tribe's criminal justice system has adequate safeguards in place to protect defendants' rights under the Indian Civil Rights Act of 1968, as amended by VAWA 2013. If the Department concludes that adequate safeguards are in place, it may grant the tribe's request after consulting with the tribe to establish a date on which the tribe may commence exercising special domestic violence criminal jurisdiction. The Department of Justice will apply the same procedures to tribal requests made at any point later in the Pilot Project, up to March 7, 2015.

## Discussion

### 1. Statutory Background

*Overview*

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).[1] Title IX of VAWA 2013, entitled ''Safety for Indian Women,'' contains section 904 (Tribal Jurisdiction over Crimes of Domestic Violence) and section 908 (Effective Dates; Pilot Project), both of which were initially drafted and proposed to Congress by the Department of Justice in 2011.[2] The purposes of these sections are to decrease domestic violence in Indian country, to strengthen the capacity of Indian tribes to exercise their inherent sovereign power to administer justice and control crime, and to ensure that perpetrators of domestic violence are held accountable for their criminal behavior.[3]

Section 904 recognizes the inherent power of ''participating tribes'' to exercise ''special domestic violence criminal jurisdiction'' (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. Section 904 also specifies the rights that a participating tribe must provide to defendants in SDVCJ cases.

Section 908(b)(1) provides that tribes generally cannot exercise SDVCJ until at least two years after the date of VAWA 2013's enactment—that is, on or after March 7, 2015. However, section 908(b)(2) establishes a ''Pilot Project'' that authorizes the Attorney General, in the exercise of his discretion, to grant a tribe's request to be designated as a ''participating tribe'' on an accelerated basis and to commence exercising SDVCJ on a date (prior to March 7, 2015) set by the Attorney General, after coordinating with the Secretary of the Interior, consulting with affected tribes, and concluding that the tribe's criminal justice system has adequate safeguards in place to protect defendants' rights under the Indian Civil Rights Act of 1968, as amended by VAWA 2013. This final notice establishes procedures for tribes to make such requests and for the Department of Justice to grant or deny them and also solicits applications from tribes that wish to commence exercising SDVCJ on an accelerated basis.

*Domestic Violence in Indian Country*

Congress found that Native American women suffer domestic violence and dating violence at epidemic rates, and often at the hands of non-Indian abusers.[4] And Census data show that a large fraction of Indian-country residents are non-Indian and that tens of thousands of Native American married women have non-Indian husbands.[5]

Domestic violence and dating violence committed in Indian country by Indian abusers against their Indian spouses, intimate partners, and dating partners generally fall within the criminal jurisdiction of the tribe. But prior to the effective date of the tribal provisions in VAWA 2013, if the victim is Indian and the perpetrator is non-Indian, the tribe lacks criminal jurisdiction as a matter of federal law and the crime can be prosecuted only by the United States or, in some circumstances, by the state in which the tribe's Indian country is located. Even violent crimes committed by a non-Indian husband against his Indian wife, in the presence of their Indian children, in their home on the Indian reservation, cannot be prosecuted by the tribe.[6] This jurisdictional scheme has proved ineffective in ensuring public safety. Too often, crimes go unprosecuted and unpunished, and the violence escalates.

*The History of the Jurisdictional Gap*

This jurisdictional gap has not always existed. In the early days of the Republic, tribes routinely, and with the United States' assent, punished non-Indians who committed acts of violence on tribal lands. For example, the very first Indian treaty ratified by the United States Senate under the Federal Constitution—the 1789 Treaty with the Wyandot, Delaware, Ottawa, Chippewa, Potawatomi, and Sac Nations—recognized that, ''[i]f any person or persons, citizens or subjects of the United States, or any other person not being an Indian, shall presume to settle upon the lands confirmed to the said

[1] Public Law 113–4, 127 Stat. 54 (2013); *see* Remarks on Signing the Violence Against Women Reauthorization Act of 2013, 2013 Daily Comp. Pres. Docs. 139 (Mar. 7, 2013).

[2] *See* Letter from Ronald Weich, Assistant Attorney General, to the Hon. Joseph R. Biden, Jr., President, United States Senate, at 1–2 & attachments (July 21, 2011).

[3] *See* S. Rep. No. 112–153, at 8–11, 32 (2012); *see also* S. 1763, 112th Cong., at 1–2 (as reported by the S. Comm. on Indian Affairs, Dec. 27, 2012) (long title listing bill's purposes); H.R. 757, 113th Cong., at 1 (2013) (same).

[4] *See* S. Rep. No. 112–153, at 3, 7–11, 32 (2012) (citing studies); *see also* Tribal Law and Order Act of 2010, Public Law 111–211, tit. II, sec. 202(a)(5), 124 Stat. 2258, 2262.

[5] *See* S. Rep. No. 112–153, at 9 (2012); U.S. Census Bureau, 2010 Census Briefs, *The American Indian and Alaska Native Population: 2010,* at 13–14 & tbl. 5 (2012) (showing that 1.1 million American Indians and 3.5 million non-Indians reside in American Indian areas); U.S. Census Bureau, Census 2010 Special Tabulation, Census 2010 PHC–T–19, Hispanic Origin and Race of Coupled Households: 2010, *Table 1, Hispanic Origin and Race of Wife and Husband in Married-Couple Households for the United States: 2010* (2012) (analyzing married-couple households nationwide, regardless of whether they reside within or outside Indian country, and showing that more than 54% of Indian wives have non-Indian husbands).

[6] The tribal provisions of VAWA 2013 are gender-neutral; but in the interests of brevity, this final notice sometimes uses male pronouns or examples to describe perpetrators of domestic violence or dating violence and female pronouns or examples to describe their victims.

[Indian tribal] nations, he and they shall be out of the protection of the United States; and the said nations may punish him or them in such manner as they see fit.'' [7] Similar language appeared in the last Indian treaty ratified before the Constitutional Convention—the 1786 Treaty with the Shawnee Nation.[8]

As recently as the 1970s, dozens of Indian tribes exercised criminal jurisdiction over non-Indians. But in 1978, in *Oliphant* v. *Suquamish Indian Tribe,*[9] the Supreme Court created federal common law preempting the exercise of the tribes' inherent sovereign power to prosecute non-Indians.[10] The *Oliphant* Court noted, however, that Congress has the constitutional authority to override the Court's holding and restore tribes' power to exercise criminal jurisdiction over non-Indians.[11] Justice Rehnquist, writing for the majority in *Oliphant,* expressly stated that the increasing sophistication of tribal court systems, the protection of defendants' procedural rights under the Indian Civil Rights Act of 1968,[12] and the prevalence of non-Indian crime in Indian country were all ''considerations for Congress to weigh'' in deciding whether to authorize tribes to try non-Indians.[13]

*Congress's New Law Recognizing Special Domestic Violence Criminal Jurisdiction*

In enacting VAWA 2013, Congress expressly recognized tribes' inherent power to resume exercising criminal jurisdiction over non-Indians. That recognition extends, however, only to crimes of domestic violence or dating violence and criminal violations of certain protection orders that occur in Indian country, in cases in which certain conditions are met. Specifically, the cases must have Indian victims; the defendants must reside in the Indian country of, or have other specified significant ties to, the prosecuting tribe; and the tribe's criminal justice system must have adequate safeguards in place to fully protect defendants' rights. Recognizing that many tribes may need time to implement those safeguards, Congress set an effective date two years after the enactment of VAWA 2013 (i.e., March 7, 2015), while giving tribes that are ready sooner the opportunity to participate in a Pilot Project at the Attorney General's discretion.

Section 904 of VAWA 2013 adds a new section 204 to the Indian Civil Rights Act of 1968 (ICRA).[14] Prior to VAWA 2013's enactment, ICRA was codified at 25 U.S.C. 1301–1303. Section 204 of ICRA is codified at 25 U.S.C. 1304, so this final notice cites that United States Code section when referring to the new law.

The Pilot Project established by VAWA 2013's section 908(b)(2) focuses specifically on the power of a ''participating tribe'' to exercise SDVCJ under subsections (b), (c), and (d) of 25 U.S.C. 1304. A ''participating tribe'' is simply an Indian tribe (as defined in 25 U.S.C. 1301(1)) that elects to exercise SDVCJ over the tribe's Indian country (as defined in 18 U.S.C. 1151).[15]

Becoming a ''participating tribe'' and exercising SDVCJ—whether as part of the Pilot Project between now and March 2015, or at any time after March 2015—are entirely voluntary. There is no requirement that any particular tribe or any specific number of tribes choose to become participating tribes and exercise SDVCJ. VAWA 2013 does not impose an unfunded mandate upon any tribe or diminish the criminal jurisdiction of the United States or of any state. Tribes that do not choose to participate in the Pilot Project may nonetheless become participating tribes later, so long as they satisfy the statutory requirements.

''Special domestic violence criminal jurisdiction'' is defined in section 1304(a)(6) to mean ''the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.'' Nearly all tribes that possess governmental powers over an area of Indian country can already exercise criminal jurisdiction over any Indian in that area (whether the defendant is a member of the prosecuting tribe or a ''nonmember Indian''). For these tribes, therefore, SDVCJ effectively is confined to criminal jurisdiction over non-Indians. Here, the term ''non-Indian'' means any person who is not an Indian as defined in 25 U.S.C. 1301(4) and thus could not be subject to federal criminal jurisdiction under the Major Crimes Act, 18 U.S.C. 1153.[16]

*The Nature of Special Domestic Violence Criminal Jurisdiction*

Subsection (b) of section 1304 describes the nature of SDVCJ. Paragraph (1) of that subsection states that a participating tribe's governmental powers include ''the inherent power of that tribe, which is hereby recognized and affirmed, to exercise [SDVCJ] over all persons.'' Congress patterned that language after the 1991 federal statute that expressly recognized and affirmed tribes' inherent power to exercise criminal jurisdiction over all Indians, implicitly including nonmember Indians.[17] The Supreme Court upheld the 1991 statute as a constitutional exercise of Congress's authority in *United States* v. *Lara.*[18]

Paragraphs (2) and (3) of subsection 1304(b) clarify that a participating tribe may exercise SDVCJ only concurrently, as the new law does not alter federal (or state) criminal jurisdiction. Importantly, the prohibition against double jeopardy does not prevent a defendant from being tried for the same conduct by more than one sovereign government. So, for example, a defendant who has been acquitted or convicted in a federal criminal proceeding can be tried for the same conduct in a subsequent tribal criminal proceeding. As always when a case falls under concurrent criminal jurisdiction, coordination between jurisdictions will help ensure that investigative and prosecutorial resources are deployed efficiently and that the same defendant is not expected

[7] Treaty with the Wyandot, Delaware, Ottawa, Chippewa, Potawatomi, and Sac Nations, art. IX, Jan. 9, 1789, 7 Stat. 28, 30.

[8] *See* Treaty with the Shawnee Nation, art. VII, Jan. 31, 1786, 7 Stat. 26, 27.

[9] 435 U.S. 191 (1978).

[10] *See id.* at 195–212.

[11] *See id.* at 195 & n.6, 206, 210–12.

[12] Public Law 90–284, tit. II, 82 Stat. 77 (1968).

[13] *Oliphant,* 435 U.S. at 212; *see also United States* v. *Lara,* 541 U.S. 193, 206 (2004) (holding that the Constitution allows Congress to override ''*'judicially made* Indian law' '' (quoting *Oliphant,* 435 U.S. at 206) (emphasis added in *Lara*)).

[14] Public Law 90–284, tit. II, 82 Stat. 77 (1968).

[15] 25 U.S.C. 1304(a)(4). The term ''Indian country'' means ''(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.'' 18 U.S.C. 1151; *see also* 25 U.S.C. 1304(a)(3).

[16] Due to a Senate amendment, VAWA 2013's section 910(a) provides that the amendments made by section 904 (codified at 25 U.S.C. 1304) apply in Alaska only to the Indian country of the Metlakatla Indian Community, Annette Island Reserve. In addition, the Supreme Court held in *Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520, 526–34 (1998), that lands conveyed by the Alaska Native Claims Settlement Act of 1971, Public Law 92–203, 85 Stat. 688 (codified, as amended, at 43 U.S.C. 1601–1629h), do not constitute ''Indian country.'' Therefore, section 1304 will have no effect on the criminal jurisdiction of most Indian tribes in Alaska.

[17] Public Law 102–137, sec. 1, 105 Stat. 646 (1991) (permanent legislation) (codified at 25 U.S.C. 1301(2)); *see* Public Law 101–511, tit. VIII, sec. 8077(b), 104 Stat. 1892 (1990) (temporary legislation) (same). ICRA defines the ''powers of self-government'' to include ''the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians.'' 25 U.S.C. 1301(2).

[18] 541 U.S. 193 (2004).

to appear at two different trials simultaneously.

Paragraph (4) sets forth two important exceptions to participating tribes' exercise of SDVCJ. First, subparagraph (A) provides that there is no SDVCJ over an alleged offense if neither the defendant nor the alleged victim is an Indian. Cases involving only non-Indians typically fall within a state's exclusive criminal jurisdiction. SDVCJ will be exercised in cases with Indian victims and non-Indian defendants. Second, subparagraph (B) limits SDVCJ to cases in which the defendant has significant ties to the participating tribe that is seeking to prosecute him. Specifically, the defendant must (1) reside in the tribe's Indian country; (2) be employed in the tribe's Indian country; or (3) be a spouse, intimate partner, or dating partner either of an Indian who resides in the tribe's Indian country or of a member of the tribe. Both of these two exceptions, as described in subparagraphs (A) and (B), are jurisdictional, so the prosecution will bear the burden of proving these jurisdictional facts.

*The Criminal Conduct Subject to Special Domestic Violence Criminal Jurisdiction*

Subsection (c) of 25 U.S.C. 1304, the second of the three key subsections for present purposes, describes the criminal conduct potentially encompassed by a participating tribe's SDVCJ. The only types of criminal conduct that are subject to a tribe's exercise of SDVCJ are (1) acts of domestic violence or dating violence that occur in the tribe's Indian country, and (2) violations of certain protection orders that occur in the tribe's Indian country.[19] The terms ''domestic violence'' and ''dating violence'' are defined in 25 U.S.C. 1304(a)(2) and (1), respectively.[20]

Criminal conduct that occurs outside of Indian country is not covered. In addition, unless a violation of a protection order is involved, crimes of child abuse or elder abuse and crimes between two strangers (including sexual assaults) generally are not covered.

Subsection (c) limits the categories of criminal conduct that are subject to SDVCJ. It does not define any criminal offense. The criminal offenses and their elements are a matter of tribal, not federal, law.

*The Rights of Criminal Defendants in SDVCJ Cases*

Subsection (d) of 25 U.S.C. 1304, the third key subsection for present purposes, describes the federal statutory rights that participating tribes must provide to defendants when exercising SDVCJ. Although the United States Constitution, which constrains the federal and state governments, has never applied to Indian tribes (which were not invited to, and did not attend, the 1787 Constitutional Convention), that fact does not leave the rights of individual defendants in tribal courts unprotected. Both tribal law and federal statutory law provide important protections for criminal defendants' rights. The tribal courts' application of the federal statutory rights described in subsection 1304(d) should be comparable to state courts' application of the corresponding federal constitutional rights in similar cases.

Subsection (d)(1)–(4) lists four sets of federal rights. The first set of defendants' rights, in paragraph (1), incorporates all rights under ICRA, 25 U.S.C. 1301–1304, that apply to a defendant in a criminal proceeding. This list of rights is substantively very similar (but not identical) to the set of criminal defendants' rights that are protected by the United States Constitution's Bill of Rights and have been incorporated into the Fourteenth Amendment's Due Process Clause and thus made fully applicable to the states. For example, ICRA prohibits tribes from compelling any person in any criminal case to be a witness against himself (akin to the United States Constitution's Fifth Amendment)[21] and from denying to any person in a criminal proceeding the right to a speedy and public trial (akin to the Sixth Amendment).[22] ICRA also prohibits a tribe from denying to any person within its jurisdiction the equal protection of its laws or depriving any person of liberty or property without due process of law.[23] Because federal law has required all tribes to protect these rights since Congress enacted ICRA in 1968, this list of rights should be familiar to tribal officials.

Furthermore, as amended by VAWA 2013, ICRA now requires a tribe that has ordered the detention of any person to timely notify him of his rights and privileges to petition a federal district court for a writ of habeas corpus and to petition the federal court to stay further detention and release him from custody pending review of the habeas petition.[24]

[19] Section 1304(c)(2) provides that a participating tribe may exercise SDVCJ over a defendant for ''[a]n act that—(A) occurs in the Indian country of the participating tribe; and (B) violates the portion of a protection order that . . . prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; . . . was issued against the defendant; . . . is enforceable by the participating tribe; and . . . is consistent with [18 U.S.C. 2265(b)].'' 25 U.S.C. 1304(c)(2). Section 1304(a)(5) defines a ''protection order'' to mean ''any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person,'' including ''any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent[e] lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.'' *Id.* 1304(a)(5).

A protection order issued by a state, tribal, or territorial court is consistent with 18 U.S.C. 2265(b) if ''such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and . . . reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.'' 18 U.S.C. 2265(b). As amended by VAWA 2013's section 905, 18 U.S.C. 2265(e) now provides that a tribal court ''shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in [18 U.S.C.] 1151) or otherwise within the authority of the Indian tribe.'' *Id.* 2265(e).

[20] Section 1304(a)(2) defines the term ''domestic violence'' as ''violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.'' 25 U.S.C. 1304(a)(2). Under section 1304(a)(7), which in turn incorporates 18 U.S.C. 2266(7), the term ''spouse or intimate partner'' includes ''a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or . . . a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and . . . any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.'' 18 U.S.C. 2266(7); *see* 25 U.S.C. 1304(a)(7). Section 1304(a)(1) defines the term ''dating violence'' as ''violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.'' 25 U.S.C. 1304(a)(1).

[21] 25 U.S.C. 1302(a)(4).

[22] *Id.* 1302(a)(6).

[23] *Id.* 1302(a)(8).

[24] *Id.* 1304(e). ICRA provides that ''[t]he privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.'' *Id.* 1303. A federal court shall grant a stay of further detention if the court ''finds that there is a substantial likelihood that the habeas corpus petition will be granted'' and, ''after giving each

Paragraph (2) of 25 U.S.C. 1304(d) requires a participating tribe exercising SDVCJ to provide defendants ''all rights described in [25 U.S.C. 1302(c)]'' in any criminal proceeding in which ''a term of imprisonment of any length may be imposed.'' Section 1302(c) describes five rights, as set forth in amendments to ICRA that Congress enacted as part of the Tribal Law and Order Act of 2010 (TLOA): [25] (1) The right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; (2) the right of an indigent defendant to the assistance of a licensed defense attorney, at the expense of the tribal government; (3) the right to a criminal proceeding presided over by a judge who is licensed to practice law and has sufficient legal training; (4) the right to have access, prior to being charged, to the tribe's criminal laws, rules of evidence, and rules of criminal procedure; and (5) the right to a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

Under TLOA's amendments to ICRA, codified in section 1302(c), these five rights must be provided to a defendant in any criminal proceeding in which the tribe imposes on the defendant a total term of imprisonment of more than one year. Therefore, these five rights are sometimes known as the ''TLOA felony sentencing'' requirements. In 25 U.S.C. 1304(d)(2), however, these same five rights must be provided to a defendant in any SDVCJ criminal proceeding in which the tribe imposes, or may impose, a term of imprisonment of any length. So indigent defense counsel, for example, is required in any SDVCJ misdemeanor case in which a term of imprisonment may be imposed.

Paragraph (3) of 25 U.S.C. 1304(d) guarantees the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians. This right to trial by an impartial jury is available to any defendant in any SDVCJ case, regardless of whether the defendant expressly requests a jury trial, and regardless of whether the offense that the tribe accuses him of is punishable by imprisonment. To properly safeguard this right, tribes exercising SDVCJ will have to determine who qualifies as part of the relevant ''community'' and how lists of those persons may be obtained and regularly updated. The law does not require that every jury in every SDVCJ case reflect a fair cross section of the community. Rather, the jury pool, or venire, from which the jury is drawn must be representative of the community. Some communities in Indian country contain sizeable non-Indian populations. Other communities in Indian country have few, if any, non-Indian members, and therefore inevitably will have few, if any, non-Indians in their jury pools. Under existing tribal laws, some tribes' jury pools already include non-Indians, while others do not.

Paragraph (4) of 25 U.S.C. 1304(d) is a ''constitutional catch-all'' provision. Although it is likely of little or no direct relevance to the Pilot Project, it has the potential to cause confusion and therefore merits further discussion here. The three prior paragraphs of 25 U.S.C. 1304(d) encompass all the rights that the 113th Congress concluded must be protected in order for Congress, acting within the constraints that the United States Constitution imposes on its authority, to recognize and affirm the participating tribes' inherent power to exercise SDVCJ over non-Indian defendants. The 113th Congress recognized, however, that the understanding of which rights are fundamental to our justice system can evolve over time. Therefore, Congress included paragraph (4), which requires a participating tribe to provide defendants in SDVCJ proceedings ''all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise [SDVCJ] over the defendant.''

This provision does not require tribal courts to protect all federal constitutional rights that federal courts are required to protect (for example, the Fifth Amendment's grand-jury indictment requirement, which state courts are also not required to protect). Rather, paragraph (4) gives courts the flexibility to expand the list of protected rights to include a right whose protection the 113th Congress did not foresee as essential to the exercise of SDVCJ. In the two-year period of the Pilot Project, however, it seems unlikely that courts will hold that any such unforeseen right falls within the scope of paragraph (4).

*Section 908, Effective Dates, and the Pilot Project*

VAWA 2013's section 908 sets the effective dates for the three key subsections of 25 U.S.C. 1304—subsections (b), (c), and (d)—as well as establishing the Pilot Project. Section 908(b)(1) provides that these three subsections generally shall take effect on the date that is two years after the date of VAWA 2013's enactment, or March 7, 2015. So tribes generally cannot exercise SDVCJ until at least March 7, 2015. On or after March 7, 2015, any tribe that determines it meets the statutory requirements for exercising SDVCJ may do so. Approval from the Department of Justice will not be necessary.

An exception to the 2015 starting date, however, is set forth in section 908(b)(2), which establishes a Pilot Project that authorizes the Attorney General, in the exercise of his discretion, to grant a tribe's request to be designated as a participating tribe on an accelerated basis and commence exercising SDVCJ earlier. Section 908(b)(2) states in full:

(2) Pilot Project.—

(A) In General.—At any time during the 2-year period beginning on the date of enactment of this Act [March 7, 2013], an Indian tribe may ask the Attorney General to designate the tribe as a participating tribe under section 204(a) of Public Law 90–284 [codified at 25 U.S.C. 1304(a)] on an accelerated basis.

(B) Procedure.—The Attorney General may grant a request under subparagraph (A) after coordinating with the Secretary of the Interior, consulting with affected Indian tribes, and concluding that the criminal justice system of the requesting tribe has adequate safeguards in place to protect defendants' rights, consistent with section 204 of Public Law 90–284 [codified at 25 U.S.C. 1304].

(C) Effective Dates for Pilot Projects.—An Indian tribe designated as a participating tribe under this paragraph may commence exercising special domestic violence criminal jurisdiction pursuant to subsections (b) through (d) of section 204 of Public Law 90–284 [codified at 25 U.S.C. 1304(b)-(d)] on a date established by the Attorney General, after consultation with that Indian tribe, but in no event later than the date that is 2 years after the date of enactment of this Act [March 7, 2015].

Only a tribe that wishes to begin exercising SDVCJ before March 7, 2015, needs to request approval from the Attorney General.

**2. The Pilot Project**

Given that the Pilot Project will directly and substantially affect Indian tribes in the next two years, the Department of Justice engaged in expedited but extensive consultation

alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.'' *Id.* 1304(e)(2).

[25] Public Law 111–211, tit. II, sec. 234(a)(3), 124 Stat. 2258, 2280.

with tribal officials in the spring of 2013 on how best to design the Pilot Project. The procedures established here reflect valuable input received from tribal officials during consultation, as well as public comments received in the summer of 2013.

*The Pilot Project's Structure and Two Phases*

Congress provided a structure for the VAWA Pilot Project that is atypical. A conventional pilot or demonstration program lasts for several years and culminates with a report evaluating the program's success or failure and recommending that the program either be made nationwide and permanent or be discontinued. By contrast, here Congress has already determined that the key feature of the Pilot Project—tribes' exercise of SDVCJ—will become available nationwide just two years after VAWA 2013's enactment. So the question raised by this Pilot Project is not whether to expand the exercise of SDVCJ, but rather how best to exercise SDVCJ. Thus, tribal leaders emphasized during consultation that one of the Pilot Project's most important functions will be to support tribes in their efforts to collaboratively develop ''best practices'' that other (non-Pilot Project) tribes can use to implement SDVCJ in 2015 and beyond.

Tribal officials and employees repeatedly highlighted the usefulness of exchanging ideas with their counterparts in other tribes, peer to peer. They recognized that the Department of Justice, in coordination with the Department of the Interior, could play a key role in facilitating an intertribal collaboration and exchange of ideas. Tribal officials pointed to the example of the Tribal Self-Governance Demonstration Project, which began in the late 1980s with fewer than a dozen tribes but has now expanded to include hundreds of tribes that are actively managing their own programs.[26]

Consistent with the views expressed by tribal leaders during consultation, the VAWA Pilot Project process has two phases: a planning and self-assessment phase that commenced with the publication of a notice in the **Federal Register** on June 14, 2013, and an implementation phase that commences with the publication of this final notice. In Phase One, in the summer and fall of 2013, tribes that preliminarily expressed interest in the Pilot Project engaged in ongoing consultations with the Departments of Justice and the Interior to address questions and concerns. These tribes were strongly encouraged to join the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) to exchange views, information, and advice about how tribes can best exercise SDVCJ, combat domestic violence, recognize victims' rights and safety needs, and fully protect defendants' rights.

To assist the ITWG and its members, the Department of Justice appended to its June 2013 **Federal Register** notice a preliminary list of substantive questions that helped identify key issues and develop a checklist of best practices for exercising SDVCJ. Some of the questions focused on statutory requirements. Others touched on broader issues that are potentially relevant to tribal best practices but clearly are not required by VAWA 2013 or any other federal law.

Starting with this preliminary list of questions, the ITWG's peer-to-peer technical assistance has covered a broad set of issues, from drafting stronger domestic violence codes and victim-centered protocols and policies, to improving public defender systems, to analyzing detention and correctional options for non-Indians, to designing more broadly representative jury pools. The objective has been to develop not a single, one-size-fits-all ''best practice'' for each of these issues, but rather multiple ''best practices'' that can be tailored to each tribe's particular needs, preferences, and traditions.

Tribes participating in the ITWG also have had opportunities to engage with the Departments of Justice and the Interior, which have provided technical advice to the working group as a whole and worked with individual tribes to address specific issues or concerns as needed. The two Departments have coordinated with each other and have supported the ITWG with targeted training and technical assistance to the extent possible with available resources.

Phase Two of the Pilot Project process, the implementation phase, will commence now, with the publication of this final notice, which specifies how tribes can certify that they meet the statutory requirements to exercise SDVCJ on an accelerated basis. During this phase, tribes may request designation as a participating tribe under 25 U.S.C. 1304 on an accelerated basis, and the Department will timely evaluate the requests based on the statutory criteria, after the required consultation with affected tribes and coordination with the Department of the Interior. The tribes whose requests are granted may commence prosecuting non-Indian perpetrators of domestic violence on a date established by the Department of Justice after further consultation with the tribe. The Department anticipates that some tribes may commence prosecuting SDVCJ cases in early 2014.

During consultation, tribal officials uniformly encouraged the Department to develop a mechanism for tribes to ''self-certify'' that they meet the statutory requirements to exercise SDVCJ. As a result, each requesting tribe will be expected to fill out an Application Questionnaire that asks the tribe to identify provisions of the tribe's criminal code, rules of procedure, and written policies, as well as actual practices, that qualify the tribe to exercise SDVCJ on an accelerated basis. Each requesting tribe is asked to attach the relevant portions of its laws, rules, and policies to the completed Application Questionnaire. The materials collected from the tribes that successfully apply to participate in Phase Two of the Pilot Project eventually will be made publicly available on the Department of Justice's Web site. The posted materials will serve as a resource for those tribes that may elect to commence exercising SDVCJ in March 2015 or later, after the Pilot Project has concluded.

This two-phased Pilot Project will benefit three sets of tribes, each in distinct ways. First, the tribes that successfully apply in the Pilot Project's second phase will have the opportunity to commence exercising SDVCJ, and thus enhance public safety in their communities, sooner than would otherwise be possible. And these tribes will establish an early, strong track record for effectively and fairly prosecuting all offenders who perpetrate crimes of domestic violence in Indian country, regardless of their Indian or non-Indian status. Second, the other tribes that, in the Pilot Project's first phase, preliminarily expressed interest in the Pilot Project and joined the ITWG will continue to have the opportunity to shape best practices that will strengthen criminal justice systems on many reservations, including their own, and thus will be better prepared to exercise SDVCJ after March 2015. And third, the tribes that do not participate in either phase of the Pilot Project will have the opportunity to learn from the experiences of the first two sets of tribes and to benefit from the body of tribal laws, rules, and policies that those tribes will have developed and implemented.

[26] *See* Public Law 100–472, sec. 209, 102 Stat. 2285, 2296–98 (1988).

*Phase One: Ongoing Consultation, Preliminary Expressions of Interest, and the Intertribal Technical-Assistance Working Group*

In the weeks following the Department's June 2013 **Federal Register** notice, 39 tribes submitted preliminary expressions of interest in the Pilot Project. A tribe that submitted a preliminary expression of interest during Phase One is not obligated during Phase Two to submit a request for designation as a participating tribe if the tribe decides to wait at least until March 7, 2015, to commence exercising SDVCJ. Conversely, a tribe that wishes during Phase Two to submit a request for designation as a participating tribe (so that it can commence exercising SDVCJ before March 7, 2015) need not have submitted a preliminary expression of interest during Phase One. However, submitting a preliminary expression of interest as early as possible facilitated the Justice Department's efforts to provide timely information to the tribe, to address issues of unique concern to the tribe, and to identify, in coordination with tribal officials, those areas where the tribe might benefit from technical assistance.

Each of the 39 tribes authorized at least one person to represent the tribe on the ITWG. The tribes' representatives on the ITWG included tribal leaders, tribal judges, tribal attorneys, prosecutors, victim advocates, victim service providers, police officers, and court administrators.

The Department of Justice asked particular Justice and Interior Department employees and non-federal experts (including persons affiliated with national intertribal organizations) to participate in ITWG meetings as observers or subject-matter experts who could provide technical assistance. But the tribal representatives were always free to meet without any federal employees present. And tribal members of the ITWG could informally exchange written drafts of tribal criminal code provisions, tribal rules of procedure, tribal policies, and other tribal best practices, with or without sharing these drafts with the federal employees. The lead organizations providing technical assistance to the ITWG have been the National Congress of American Indians (NCAI), the Tribal Law and Policy Institute (TLPI), and the National Council of Juvenile and Family Court Judges (NCJFCJ).

The full ITWG has held two in-person meetings, in South Carolina on August 20 and 21, 2013, and in North Dakota on October 29 and 30, 2013. And the ITWG or its subcommittees have met by conference call seven times, on July 19, August 5, September 10, September 20, October 4, October 8, and October 10, 2013. A Tribal Code Development Subcommittee has developed a checklist that tribes can use as a tool to assess their compliance with federal requirements and readiness to exercise SDVCJ. The ITWG has also conducted Webinars and special sessions focusing on particular issues such as jury selection and indigent defense. On September 13, 2013, the Center for Jury Studies, a project of the National Center for State Courts, presented a Webinar on the fair cross section requirement, and a second Webinar on jury selection has been scheduled. The ITWG's Public Defender Advisory Group (PDAG) conducted its first of four planned Webinars, on competency of defenders and the timing of their appointment, on September 27, 2013. PDAG's upcoming Webinars will cover models for quality assurance and training of conflict attorneys; standards for defining indigency; and investigation services and caseload and workload standards. A series of Webinars on victims' rights will commence this fall.

Regional offshoots of the ITWG have also sprouted. For example, on September 5, 2013, ITWG members and other tribes from Oklahoma gathered in Okmulgee to discuss VAWA implementation in the unique context of Oklahoma. And NCAI sponsored breakout sessions for ITWG members and other tribes interested in VAWA implementation at their Mid-Year Conference in Reno, Nevada, on June 24, 2013, and at their 70th Annual Convention in Tulsa, Oklahoma, on October 15, 2013.

ITWG meetings will proceed into Phase Two, to continue identifying, documenting, and disseminating best practices that can be replicated by other tribes, and to help collect data and assess the Pilot Project tribes' efforts to exercise SDVCJ, combat domestic violence, recognize victims' rights and safety needs, and fully protect defendants' rights. Alongside this intertribal work, the Department of Justice recognizes the importance of the government-to-government relationship that exists between the United States and each individual tribe. During Phase One, some tribes engaged in one-on-one discussions with the Department of Justice or the Department of the Interior about training, technical assistance, and issues unique to that tribal government. Both Departments look forward to further one-on-one consultations during Phase Two.

*Phase Two: Tribal Requests and the Application Questionnaire*

With Phase Two of the Pilot Project now beginning, tribes may request designation as participating tribes that may commence exercising SDVCJ on an accelerated basis. It is important to note that the statute does not set the number of tribes that can participate in the Pilot Project and exercise SDVCJ on an accelerated basis, though it does limit the Pilot Project to just two years, effectively ending in March 2015. After that time, any tribe that determines it meets the statutory requirements and wishes to exercise SDVCJ may do so without the involvement of the Department of Justice.

During the course of the Pilot Project, however, section 908(b)(2)(B) of the statute authorizes the Department of Justice to grant a request only after concluding that the requesting tribe's criminal justice system ''has adequate safeguards in place to protect defendants' rights, consistent with [25 U.S.C. 1304].'' Tellingly, Congress did not restrict the Department's purview to the rights of defendants specified in subsection 1304(d), but rather demanded consistency with all subsections of section 1304. The statute thus requires the Department to consider how the tribe plans to comply with the entirety of section 1304, focusing (though not exclusively) on the specific defendants' rights enumerated in subsection 1304(d).

The Attorney General is required to exercise his discretion in the Pilot Project process, as the statute states that he ''may'' (not ''shall'') grant a qualifying tribe's request. In exercising his discretion, the Attorney General will be bound by the text of section 1304 and guided by the section's broader purposes: to decrease domestic violence in Indian country, to strengthen the capacity of Indian tribes to exercise their inherent sovereign power to administer justice and control crime, and to ensure that perpetrators of domestic violence are held accountable for their criminal behavior.

To address the overwhelming preference for a self-certification process that tribal leaders and experts expressed during consultation and in public comments, and to facilitate moving quickly during the Pilot Project's two-year window while fulfilling the Attorney General's statutory duty, the Department will ask each requesting tribe to provide certified answers to a list of detailed questions about the various safeguards that the tribe has put in place to protect defendants' rights. The Application Questionnaire,

appended to this final notice, is informed by comments that the public submitted in response to the June 2013 **Federal Register** notice and by lessons learned through the ITWG process.

The Application Questionnaire will need to be completed and certified as accurate by the tribe's chief executive, judicial, and legal officers. To provide an adequate basis for the Justice Department to make the determination demanded by the statute, the questions are comprehensive and detailed. The bulk of the questions likely can be answered with a single sentence or a simple ''yes'' or ''no,'' supplemented with applicable excerpts from the tribe's laws, rules, or policies. This way, the Questionnaire attempts to put as little burden as possible on tribal officials and employees, while addressing the Department's need for sufficiently detailed information to perform its statutory responsibility. The Application Questionnaire also may help a tribe assess its own criminal justice system's readiness to exercise SDVCJ.

The completed, certified Application Questionnaire will serve as the tribe's formal request to be designated as a participating tribe that can exercise SDVCJ on an accelerated basis under the Pilot Project. The Department will give the same priority consideration to any tribal request that it receives within 30 days after publication of this final notice in the **Federal Register**, regardless of the precise date within that initial 30-day period on which a tribe makes its request. The Department also will consider any tribal request received before March 7, 2015. And the Department will consider Phase Two requests from both ITWG members and nonmembers.

*Phase Two: The Federal Response to Tribal Requests*

Once the Department of Justice has received a requesting tribe's complete, certified Application Questionnaire, including attached excerpts of tribal laws, rules, and policies, the Department will take the following eight steps.

First, the requesting tribe's entire application will be shared with relevant components of the Department of Justice, including any U.S. Attorney's Office with jurisdiction over the tribe's Indian country, and relevant components of the Department of the Interior, including the Office of the Assistant Secretary of the Interior–Indian Affairs; the Office of the Solicitor of the Interior; and the Bureau of Indian Affairs' Office of Justice Services (BIA–OJS).

Second, the Justice Department will post a notice on its Tribal Justice and Safety Web site (*http://www.justice.gov/tribal/*) indicating that the tribe has submitted a request in Phase Two of the Pilot Project. This notice will announce an expedited telephonic consultation for officials of federally recognized Indian tribes who wish to comment on the request, as well as an expedited deadline and instructions for submitting written comments. As required by VAWA 2013's section 908(b)(2)(B), the Justice Department will consult with elected and duly appointed officials of affected tribes, on an expedited basis, consistent with applicable Executive Orders, Presidential Memoranda, and Department policy statements on tribal consultation.

Third, generally working through the requesting tribe's authorized point of contact (POC), as identified in the tribe's Application Questionnaire, the Justice Department may make follow-up inquiries about the tribe's criminal justice system.

Fourth, personnel from the Departments of Justice and the Interior will coordinate in reviewing the requesting tribe's application. They also may consider relevant information obtained in other contexts, including grant applications, such as the tribe's prior Coordinated Tribal Assistance Solicitation (CTAS) applications, and any tribal-court review that BIA–OJS has conducted under 25 U.S.C. 3612.

Fifth, if needed and if funding is available, the Department may provide appropriate training or technical assistance to a tribe. The Department may also offer specific training and technical assistance to address particular needs through the National Indian Country Training Initiative or through the Department's grant-making components (the Office of Justice Programs (OJP), the Office on Violence Against Women (OVW), and the Office of Community-Oriented Policing Services (COPS)); coordinate with the Department of the Interior's Office of Justice Services (BIA–OJS) to identify and arrange training and technical assistance specific to the tribe's needs; and work with the ITWG to identify other tribal or intertribal resources that may assist the tribe. After receiving training or technical assistance, a tribe may elect to prepare and submit a revised request.

Sixth, Justice Department personnel will recommend to the Associate Attorney General whether the requesting tribe should be designated as a participating tribe under 25 U.S.C. 1304 on an accelerated basis. This recommendation will turn on whether the requesting tribe's criminal justice system has adequate safeguards in place to protect defendants' rights, consistent with all subsections of 25 U.S.C. 1304. The Department's Office of Tribal Justice (OTJ) will inform the tribe's POC of the recommendation.

Seventh, if the recommendation is positive, the Department of Justice will consult with the requesting tribe to establish a date on which the tribe may commence exercising SDVCJ. The commencement date may be conditioned on the tribe receiving certain additional training or technical assistance or taking certain steps, such as notifying the public when the tribe will start exercising SDVCJ.

Eighth, if the Department of Justice and the tribe can reach agreement on a starting date and conditions (if any), the Associate Attorney General, exercising discretion delegated by the Attorney General, may designate the tribe as a participating tribe under 25 U.S.C. 1304 on an accelerated basis. The Department will publish notice of the designation on the Department's Tribal Justice and Safety Web site (*http://www.justice.gov/tribal/*) and in the **Federal Register**. The Department also will publish on its Web site the tribe's final Application Questionnaire, including attached excerpts of or links to tribal laws, rules, and policies.

**3. Discussion of Public Comments on the June 2013 Notice**

In response to the notice published on June 14, 2013, *see* Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence, 78 FR 35961 (June 14, 2013), with a comment period through September 12, 2013, the Department of Justice received eight sets of comments: six from tribal governments or officials and two from national intertribal organizations. All comments have been considered in preparing this final notice. Set forth below is a summary of the comments, organized by topic, and the Department's responses to them.

*The Intertribal Technical-Assistance Working Group (ITWG)*

*Comments:* Nearly all the commenters applauded the creation of the ITWG, the speed with which its work got underway, the dedication and seriousness of its tribal members, and the support that the Departments of Justice and the Interior have provided. Three commenters urged the Department of Justice to continue supporting the ITWG and its planning and information-sharing functions at least into Phase Two and perhaps beyond.

*Response:* At least until early 2015, the Departments of Justice and the Interior will continue to support the ITWG with training and technical assistance to the extent possible with available resources and to participate in ITWG meetings as observers or subject-matter experts if the tribal representatives so request.

*Key Features of the June 2013 Notice*

*Comments:* Two commenters stated that the statutory background in the Department's June 2013 **Federal Register** notice helped illuminate underlying constitutional and legal issues, historical context, the importance of inherent tribal sovereign authority, tribal governments' concern for public safety, and Congress's intent in enacting VAWA 2013's tribal-jurisdiction provisions. Most commenters stated that the extensive preliminary list of questions appended to that notice has been a useful tool for tribes as they assess their readiness to implement SDVCJ and consider amending their codes. One commenter, however, expressed concern that the way some questions were framed presumed that tribes were inadequately protecting important rights and thus understated the readiness and sophistication of many tribal court systems.

*Response:* The statutory background section of this final notice largely mirrors its counterpart from the June 2013 notice. The Department believes that the lengthy set of questions appended to the June 2013 notice has generally proved to be helpful to the ITWG and its members and was predicated on the well-founded assumption, grounded in decades of experience by the Departments of Justice and the Interior, that many tribal justice systems are sophisticated, fair, and fully capable of safeguarding the rights of all criminal defendants, Indian and non-Indian alike.

*Government-to-Government Consultation, Apart From the ITWG*

*Comments:* Four commenters asked the Department to remain available for one-on-one consultation with any tribe that wishes to have the Department preliminarily review proposed revisions to the tribe's codes and procedures before the tribe undertakes the potentially time-consuming process of tribal community engagement and tribal-council approval or submits an application in Phase Two.

*Response:* Upon request from a tribe, the Departments of Justice and the Interior will continue to engage in one-on-one, government-to-government consultation to address a tribe's questions and concerns and, to the extent possible with available resources, to provide the training and technical assistance that the tribe's officers, employees, or contractors need before the tribe commences exercising SDVCJ.

*Funding for Tribal Criminal Justice Systems*

*Comments:* One commenter asked the Departments of Justice and the Interior to make funds available for contracting with special prosecutors and defense attorneys, and also noted the need for federal funding to provide training, technical assistance, data collection, and evaluation of tribes' criminal justice systems. Another commenter emphasized that, while the lack of federal funding makes the provision of tribal-court services more difficult, it does not actually endanger justice.

*Response:* The Departments of Justice and the Interior have been, and will continue, providing training, technical assistance, and other support for tribal justice systems with available resources. Under VAWA 2013, Congress has authorized funds to provide grants to tribal governments for various purposes, including prosecution and indigent defense counsel, and also to provide training, technical assistance, data collection, and evaluation of tribes' criminal justice systems. The Department of Justice will continue to evaluate what resources can be made available for these purposes.

*Speed and the Need To Review Tribes' Criminal Justice Systems*

*Comments:* Five commenters acknowledged that the Department must thoroughly evaluate each tribe's application, as Congress has given the Department the responsibility to determine whether the requesting tribe's criminal justice system has adequate safeguards in place to protect defendants' rights. But these and other commenters also urged the Department to continue on an expedited path and avoid getting bogged down in a lengthy or cumbersome process. As one commenter put it, tribal governments need to have their applications granted, so that they can ''proceed with the important work of protecting their Native sisters, mothers, and daughters.'' Another commenter noted that some tribes would not be ready to submit an Application Questionnaire immediately upon publication of this final notice and specifically called for a one-month limit, from the date an application is received to the date it is granted or denied, to ensure that the Pilot Project would not expire before those tribes have had an opportunity to prosecute SDVCJ cases.

*Response:* Given the short time that Congress allotted, the Pilot Project's effectiveness depends in part on a speedy federal process for reviewing tribal applications. However, the Department takes very seriously its statutory responsibilities (1) to ensure that each tribe that exercises SDVCJ on an accelerated basis under the Pilot Project has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304, and (2) to consult with affected tribes, and therefore believes that some applications will necessarily take longer than a month to properly review.

*The Nature of the Federal Process for Reviewing Tribal Applications*

*Comments:* Most commenters encouraged a flexible, collaborative process for Pilot Project approval, guided by respect for the government-to-government relationship between two sovereigns and deference to tribal self-governance and self-determination, rather than a process that would be paternalistic, bureaucratic, burdensome, or resource-sapping.

*Response:* The Department accepts these comments and has incorporated—and will continue to incorporate—these concepts in the approval process.

*Comments:* One commenter requested clear and specific standards that the Department will use when reviewing a tribe's Application Questionnaire and determining whether the tribe may commence exercising SDVCJ under the Pilot Project, so that tribes will know precisely what information would constitute an adequate response to each question in the Application Questionnaire. The commenter expressed concern that tribes not be ''arbitrarily'' prevented from exercising SDVCJ at the earliest possible date.

*Response:* The Department believes that this final notice sets forth clear standards grounded in the plain text of the new statute. Any effort to provide more detailed, precise, proscriptive guidance would, in the Department's view, disrespect tribal discretion and undercut the flexibility to which each tribe, as a sovereign exercising its inherent authority, is entitled.

*Comment:* One commenter stated that no tribe should have to go through multiple rounds of corrections and therefore, if an application is rejected, the Department should at the time of rejection clearly and completely explain the application's deficiencies that will need to be addressed in order to approve a revised application.

*Response:* The Department will strive to inform the tribe clearly, completely, and reasonably promptly of any deficiencies in its initial application.

*Comments:* One commenter suggested that the Department provide technical assistance to any tribe whose Application Questionnaire shows that the tribe's criminal justice system does not meet VAWA 2013's requirements, just as it would to a tribe that requests technical assistance prior to submitting an Application Questionnaire. Another commenter stated that, if the Department finds that a tribe does not meet at least one of VAWA 2013's requirements, the tribe should be allowed to rectify the situation instead of the Department's denying the application.

*Response:* The Office of Tribal Justice (OTJ) will inform the tribe's POC of the initial recommendation from Justice Department personnel. Receiving an initially negative response will not bar a tribe from submitting a revised request at any time during Phase Two of the Pilot Project. Moreover, if funding is available, the Department may provide appropriate training or technical assistance to the tribe, which may enable the tribe to prepare and submit a revised request. The Department may also offer specific training and technical assistance to address particular needs through the National Indian Country Training Initiative or the Department's grant-making components (OJP, OVW, and COPS); coordinate with the Department of the Interior's Office of Justice Services (BIA–OJS) to identify and arrange training and technical assistance specific to the tribe's needs; and work with the ITWG to identify other tribal or intertribal resources that may assist the tribe. After receiving training or technical assistance, a tribe may elect to prepare and submit a revised request.

*Comment:* One commenter asked the Department to approve a tribe's application if its only deficiency is that the Secretary of the Interior has not yet approved changes that the tribe has made to its ordinances or codes in order to comply with VAWA 2013's requirements. The commenter also asked the Justice Department to encourage the Department of the Interior to expedite the approval process for amendments to a tribe's ordinances and codes.

*Response:* If the sole deficiency in a tribe's application is that some of the safeguards that it has put in place to protect defendants' rights, consistent with 25 U.S.C. 1304, depend on tribal code amendments that are not yet effective because they have not yet been approved by the Secretary of the Interior, the Department of Justice would likely so inform the tribe, condition the tribe's commencement date for exercising SDVCJ on Secretarial approval of the tribal code amendments, and encourage the Department of the Interior to expedite the approval process.

*Types of Questions on the Application Questionnaire*

*Comments:* Six commenters suggested that the Application Questionnaire focus on the required elements under VAWA 2013. Most of them noted that the preliminary list of discussion questions appended to the Department's June 2013 notice, while helpful to the tribes in reviewing and internally assessing their own domestic violence efforts, focused on promoting tribal best practices rather than on revising tribal codes and procedures to satisfy VAWA 2013, and thus was too long and cumbersome to serve as a model for the Application Questionnaire. Three commenters encouraged the inclusion, after the mandatory questions, of some optional questions regarding best practices (e.g., whether the tribe has a victims' rights code) and noted that the answers to these optional questions could benefit other tribes. One commenter suggested that questions be designed to trigger very short answers, and three commenters suggested that short answers could be supplemented by attaching provisions from tribal codes and procedures.

*Response:* The Department accepts these comments.

*Comment:* One commenter suggested creating two options for federal approval of a tribe's request: one option would allow a more streamlined approach for tribes that are ''ready now'' to commence exercising SDVCJ; the second option could apply to those tribes that may require additional technical assistance.

*Response:* The Department rejects this comment and believes that, although each tribe's criminal justice system is different and has unique strengths and weaknesses, all tribes seeking to commence exercising SDVCJ on an accelerated basis under the VAWA Pilot Project should start on an equal footing and be subject to consistent procedures and standards. Indeed, the central purpose of the Application Questionnaire is to determine which tribes are currently ''ready'' to exercise SDVCJ. Prematurely designating some tribes as ''ready'' and then exempting them from the requirement to complete the Application Questionnaire would be fundamentally unfair.

*Comment:* One commenter requested that the Application Questionnaire avoid any question that inadvertently might compromise the attorney-client privilege between the tribal council and its attorneys by eliciting commentary supporting tribal code revisions made in response to VAWA 2013.

*Response:* Answering the Application Questionnaire will not require the tribe to compromise, jeopardize, or waive its attorney-client privilege.

*Specific Topics Potentially Covered by the Application Questionnaire*

*Comments:* Three commenters suggested that the Application Questionnaire include questions on tribal criminal offenses for domestic violence, dating violence, and violations of protection orders; non-Indian defendants' ties to the tribe; indigent defense counsel; licensed defense attorneys; public availability of tribal laws, including codes, regulations, rules, and interpretive documents; records of criminal proceedings; notification of federal habeas rights; the fair cross section requirement for jury pools (including a copy or description of a jury selection plan); and legal training and licenses for judges presiding over criminal proceedings.

*Response:* The Department largely accepts these comments, as the Application Questionnaire touches on all these topics, consistent with the plain text of 25 U.S.C. 1304.

*Comment:* One commenter asked the Department to provide further guidance on how jury pools can reflect a ''fair cross section of the community'' in the context of ''checker-boarded'' Indian country, where a tribe's trust lands and restricted allotments are scattered across vast territory. This commenter also requested further guidance on how a tribe can enforce jury summonses on the non-Indian population in such circumstances.

*Response:* To the extent possible with available resources, the Departments of Justice and the Interior will continue providing training and technical assistance on these issues, both directly to individual tribes and through the ITWG.

*Comment:* One commenter stated that questions about venire statistics could require a tribe to review court files and summonses issued and responded to, and then enter that information into a database—a potentially expensive, burdensome process.

*Response:* Although a tribe may want to collect or evaluate such data once it commences exercising SDVCJ, it need not do so before completing the Application Questionnaire.

*Comment:* One commenter opposed Application Questionnaire questions about individual judges' and attorneys' qualifications, especially for larger tribes that use rotating appointed counsel from the bar membership for indigent defense. The commenter also noted that changes in personnel could render the answers inaccurate. The commenter recommended focusing instead on the tribe's process for hiring or appointing judges and attorneys.

*Response:* The Application Questionnaire directly asks the tribe how it will safeguard defendants' rights to licensed indigent defense counsel and law-trained, licensed judges. And the Application Questionnaire also asks, in the context of anticipated SDVCJ cases during the Pilot Project, for a list of all jurisdictions where each indigent defense attorney is licensed to practice law, a list of all jurisdictions where each judge presiding over an SDVCJ proceeding is licensed to practice law, and a brief description of each judge's legal training to preside over criminal proceedings. To the extent that changes in personnel render the answers incomplete or inaccurate during the Pilot Project (i.e., prior to March 7, 2015), the tribe's authorized point of contact (POC) will have the responsibility to provide the Department with updated information.

*Comment:* One commenter expressed concern about the Departments of Justice and the Interior holding tribal judges to higher standards than state judges or holding tribal indigent defense counsel to higher standards than state indigent defense counsel. The same commenter stated that the level of practice within the tribal courts, as to both the judges and the attorneys, often exceeds that found in state courts.

*Response:* The Department believes that, in many tribal criminal justice systems, the judges' and defense attorneys' licenses, legal training, and experience will compare favorably to those of the state or local judges and defense attorneys who participate in similar criminal proceedings in cases arising in or near the tribe's Indian country. The tribal courts' application of the federal statutory rights described in 25 U.S.C. 1304(d) should be comparable to state courts' application of the corresponding federal constitutional rights in similar cases.

*Comment:* One commenter objected to the Application Questionnaire asking for an accounting of the tribe's compliance with ICRA, as that would call for a lengthy, burdensome dissertation on tribal governance and constitutional law. The commenter stated that most tribes have either two or three independent branches of government, each with its own responsibilities for protecting individuals' rights. Furthermore, the commenter suggested that ICRA violations by tribal police or tribal prosecutors that were subsequently corrected, perhaps by the tribal courts themselves, should not disqualify a tribe from participating in the Pilot Project.

*Response:* The Application Questionnaire does not call for a lengthy or burdensome dissertation on tribal governance and constitutional law. But it does require the tribe to certify and demonstrate that the tribe's criminal justice system has adequate safeguards in place to protect all applicable rights of defendants under ICRA, as amended.

*Comment:* One commenter suggested that the Application Questionnaire ask whether the tribe's judiciary is independent, either statutorily or functionally.

*Response:* Although the Application Questionnaire does not include a question specifically focusing on the independence of the tribe's judiciary, several of its questions present an opportunity for the tribe to submit information and legal materials on the independence of the tribe's judiciary.

*Comment:* One commenter stated that the Application Questionnaire should not ask whether tribal law permits imprisonment for failure to pay a criminal fine because VAWA 2013 does not authorize such imprisonment of a non-Indian defendant.

*Response:* The Application Questionnaire does not include any question about imprisonment for failure to pay a criminal fine.

*Comment:* One commenter objected to the Application Questionnaire containing questions about the topics of ''tribal protection of victims' rights''; ''detention, corrections, probation, and parole''; ''crime information databases''; and ''commencing to exercise SDVCJ,'' akin to the preliminary questions found at 78 FR 35973–74, although the commenter stated that these questions were useful for discussing the protection of victims and various administrative considerations. Another commenter asked the Department to omit from the Application Questionnaire any question about the tribe's capacity to access certain national crime information databases.

*Response:* The Application Questionnaire does not require answers to questions on these topics, but does allow each tribe, at its discretion, to provide additional information or legal materials relevant to these or other topics that may be helpful in addressing the tribe's readiness to commence exercising SDVCJ on an accelerated basis while protecting defendants' rights, consistent with 25 U.S.C. 1304.

*Comment:* One commenter asked the Department to provide further guidance on how non-Indians may be detained and which parties will be responsible for health care for incarcerated non-Indian offenders.

*Response:* To the extent possible with available resources, the Departments of Justice and the Interior will continue providing training and technical assistance on these issues, both directly to individual tribes and through the ITWG.

*Comment:* One commenter opposed requiring Pilot Project tribes to collect and analyze data on the tribe's SDVCJ cases, even if such statistics would be useful in reducing domestic violence or providing victim services.

*Response:* The Department will not require Pilot Project tribes to collect or analyze data on SDVCJ cases, but tribes are free to do so either on their own or in collaboration with other tribes through the ITWG.

*Comment:* One commenter asked the Department to include in the Application Questionnaire a question about whether, how, and by what amount VAWA 2013 implementation will cause increases in costs and budgets for tribal courts, prosecution, defense attorneys, and tribal police.

*Response:* The final question in the Application Questionnaire invites tribes, at their discretion, to address any pertinent topic that the tribe would like the Departments of Justice and the Interior to consider when reviewing the tribe's Application Questionnaire. So a tribe is free to submit information about costs and budgets, if it so chooses.

*Tribal Self-Certification and the Application Questionnaire*

*Comments:* Most commenters stated that the approval process should focus on ''self-certification,'' with a straightforward tribal government certification of well-known criminal-procedure standards. This approach was commended because there is limited time left within the two-year Pilot Project period, because the individuals working in or with the tribal justice system on a daily basis are best positioned to evaluate the adequacy of its safeguards to protect defendants' rights, because those same individuals have a great incentive to avoid adverse findings in federal habeas proceedings, and also because self-certification promotes tribal self-determination and respects the tribes' inherent authority to exercise this criminal jurisdiction.

*Response:* Tribal self-certification is a central feature of the procedures established by this final notice. The Application Questionnaire must be certified as complete and accurate by the tribe's chief executive, judicial, and legal officers. Furthermore, each of these officers must certify that he or she has read the Indian Civil Rights Act, as amended by TLOA and VAWA 2013, and that the tribe's criminal justice system has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

*Comment:* One commenter suggested that, to ensure accurate information and minimize potential delays, the Department should rely on the tribe's designated point of contact, who could be a tribal leader, a tribal chief judge, a tribal attorney, or another tribal governmental official.

*Response:* The Application Questionnaire requires the tribe's governing body to authorize one person to serve as the tribe's point of contact (POC) with the Department of Justice for purposes of the VAWA Pilot Project. The POC, who can be the tribe's chief executive, judicial, or legal officer, or some other person chosen by the tribe's governing body, should make best efforts during the Pilot Project to promptly answer written or oral questions from the Departments of Justice and the Interior about the tribe's criminal justice system; update any answers to the Application Questionnaire if they become incomplete, inaccurate, or outdated; fix any omissions in the Application Questionnaire; and submit to the Department of Justice any additions, deletions, or corrections to the Application Questionnaire.

## 4. Statutory and Executive Order Reviews

### *General Disclaimers*

This final notice is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party in any matter, civil or criminal, against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person, nor does this final notice place any limitations on otherwise lawful litigative prerogatives of the U.S. Department of Justice.

Furthermore, nothing in this final notice shall be construed to (1) encroach upon or diminish in any way the inherent sovereign authority of each tribe over its own government, legal system, law enforcement, and personnel matters; (2) imply that any tribal justice system is an instrumentality of the United States; or (3) alter the trust responsibility of the United States to Indian tribes.

### *Administrative Procedure Act*

This final notice concerns interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice for purposes of the Administrative Procedure Act, and therefore notice and comment are not required under 5 U.S.C. 553(b)(A). Nonetheless, the Department of Justice published the June 2013 notice in the **Federal Register** and on the Department's Tribal Justice and Safety Web site for public comment, as well as to solicit preliminary expressions of interest in the Pilot Project.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

This final notice fully comports with Executive Order 13175 of November 6, 2000. Although it creates no new substantive rights and imposes no binding legal requirements, the final notice has tribal implications because it will have substantial direct effects on Indian tribes and their relationships with the Federal Government. The Department therefore has engaged in meaningful consultation and collaboration with elected and duly appointed tribal officials in developing this final notice.

More specifically, the Department of Justice organized and led two telephonic consultations with tribal leaders on how best to structure and implement the voluntary Pilot Project established under sections 904 and 908 of VAWA 2013. To facilitate the consultation and frame the discussion with tribal governments, in mid-April the Department circulated a six-page framing paper that presented background on the new law and raised a series of questions on specific issues relating to the Pilot Project.[27] The first consultation was held on May 14, 2013, and the second on May 17, 2013. The Department also consulted members and representatives of the Attorney General's Tribal Nations Leadership Council on April 30, 2013.

On April 12, 2013, the Department participated in a hearing of the Indian Law and Order Commission on implementation of VAWA 2013 and the Pilot Project, held in conjunction with the Federal Bar Association's 38th Annual Indian Law Conference in New Mexico. In addition, the Department held a series of informal consultations with tribal stakeholders, including calls with tribal judges and court personnel (on May 8, 2013); tribal prosecutors (May 13); tribal public defenders (May 2); federal public defenders (May 6); tribal in-house counsel (May 9); tribal victim advocates and victim service providers (May 1); and professors of Indian law (May 10). Finally, the Department received written comments from more than a dozen American Indian and Alaska Native tribes, members of the public, and intertribal organizations, including the National Congress of American Indians (NCAI), the National American Indian Court Judges Association (NAICJA), the National Association of Indian Legal Services (NAILS), and the Tribal Law and Policy Institute (TLPI).

During these consultations, some tribal officials expressed a desire to expedite the Pilot Project process, while other tribal officials asked the Department of Justice to engage in further tribal consultation before proceeding. Generally, there was a consensus that the main value of the Pilot Project would lie in (1) collaboration and information-sharing among the Pilot Project tribes; (2) flexible interaction between tribes and criminal justice experts at the Department of Justice and elsewhere; and (3) collecting the various tribal laws and procedures developed by the Pilot Project tribes that exercise SDVCJ on an accelerated basis and ''sharing that information forward'' with tribes that may implement VAWA 2013 and exercise SDVCJ after the Pilot Project is completed in March 2015.

There also was a strong consensus in favor of tribal ''self-certification''—that is, a process in which the requesting tribe provides brief written answers to detailed questions about its criminal justice system; the tribe's leader, attorney, and chief judge each certify the completeness and accuracy of the answers; and Justice Department personnel then rely principally on those answers and thus need to engage in only limited follow-up inquiries, rather than undertake extensive investigation and site visits. At the same time, tribal officials recognized that the Department of Justice has a responsibility to exercise due diligence in assessing tribes' capacities and therefore must at times review extrinsic evidence of tribes' compliance with the new federal law's requirements, including tribal constitutional provisions, tribal code provisions, tribal court rules, tribal administrative orders, tribal written policies, and tribal written procedures,

[27] U.S. Department of Justice, *Implementation of Sections 904 and 908 of the Violence Against Women Reauthorization Act of 2013* (Apr. 16, 2013).

as well as summaries of the qualifications of certain tribal staff.

During the five months following the Department's publication of the June 2013 notice in the **Federal Register**, informal tribal consultation has continued. First, the Departments of Justice and the Interior have received extensive advice and guidance from tribal officers, employees, experts, and consultants as part of the ITWG's collective deliberations. Second, on multiple occasions in the last five months, each Department has taken the opportunity to engage in one-on-one, government-to-government consultation on issues of unique concern to a particular tribal member of the ITWG.

The Department of Justice believes that this final notice addresses the key concerns that tribal officials highlighted at the tribal consultations in April and May 2013, at ITWG meetings during Phase One, in one-on-one, government-to-government consultations during Phase One, and in public comments received in September 2013. The two-phased structure is designed to move forward quickly with implementation, yet allow adequate time for deliberation and consultation. Phase One of the Pilot Project addressed the consensus about intertribal collaboration and information-sharing. Phase Two will allow that collaboration and information-sharing to continue and will put into effect the consensus about tribal self-certification, while also providing for necessary, targeted follow-up inquiries by the Department of Justice.

*Executive Orders 12866 and 13563—Regulatory Planning and Review*

Because this final notice is not a ''significant regulatory action'' under Executive Order 12866 of September 30, 1993 (''Regulatory Planning and Review''), as amended, it is not subject to review under Executive Order 12866 or 13563.

*Executive Order 13132—Federalism*

This final notice will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Under 25 U.S.C. 1304(b)(2)–(3), a participating tribe may exercise SDVCJ only concurrently with the jurisdiction of the United States, of a state, or of both. The new law does not alter federal or state criminal jurisdiction. Therefore, in accordance with Executive Order 13132 of August 4, 1999, this final notice does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

*Executive Order 12988—Civil Justice Reform*

This final notice meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988 of February 5, 1996.

*Regulatory Flexibility Act*

Because this final notice is not promulgated as a final rule under 5 U.S.C. 553 and was not required under that section to be published as a proposed rule, the requirements for the preparation of a regulatory flexibility analysis under 5 U.S.C. 604(a) do not apply. In any event, this final notice will not have a significant economic impact on a substantial number of small entities; thus, no regulatory flexibility analysis is required for that reason as well. *Id.* 605(b).

*Unfunded Mandates Reform Act of 1995*

This final notice will not result in 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, and it will not significantly or uniquely affect small governments. Moreover, becoming a participating tribe and exercising SDVCJ—whether as part of the Pilot Project between now and March 2015, or at any time after March 2015—are entirely voluntary. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4.

*Small Business Regulatory Enforcement Fairness Act of 1996*

Because this final notice is not a rule, it need not be reviewed under section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. In any event, this final notice will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. *See id.*

*Paperwork Reduction Act*

This final notice establishes a new ''collection of information'' covered by the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3521. Under the PRA, a covered 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 control number assigned by the Office of Management and Budget (OMB). *Id.* 3507(a)(3), 3512. The information collection in this final notice requires an Indian tribe seeking to exercise SDVCJ on an accelerated basis during the Pilot Project established under VAWA 2013 to provide to the Department certain information about the tribe's criminal justice system and its safeguards for defendants' Federal rights. The Department submitted an information-collection request to OMB for review and approval in accordance with the review procedures of the PRA. OMB approved the collection on November 20, 2013, and assigned OMB control number 1105–0101.

The Department of Justice did not receive any comments specifically about the proposed collection.

Dated: November 25, 2013.

**Eric H. Holder, Jr.,**

*Attorney General.*

## Appendix

**Application Questionnaire for the VAWA Pilot Project on Tribal Criminal Jurisdiction**

*Instructions*

Completing this Application Questionnaire is a necessary step for any Indian tribe that wishes to commence exercising special domestic violence criminal jurisdiction (SDVCJ) on an accelerated basis (i.e., prior to March 7, 2015) under the voluntary Pilot Project described in section 908(b)(2) of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Please review this Application Questionnaire in its entirety before beginning to fill it out.

It is the Tribe's responsibility to ensure that the application is complete and accurate. To the extent that future changes in the Tribe's laws, rules, policies, or personnel render the answers incomplete or inaccurate during the Pilot Project (i.e., prior to March 7, 2015), the Tribe's authorized point of contact (POC) will have the responsibility of providing the Department of Justice with updated information.

Most questions can be answered with a ''Yes'' or a ''No.'' If the Tribe wishes to provide a longer answer to a particular question, the Tribe should please feel free to attach additional pages, but on each additional page please identify by number the question(s) being answered.

Most questions expressly call for ''relevant legal materials.'' When answering these questions, any of the following types of legal materials might be relevant:

- Tribal constitutional provisions
- Tribal code or statutory provisions
- Tribal court rules, such as tribal rules of criminal procedure, tribal rules of evidence, or tribal rules of appellate procedure
- Tribal judicial opinions
- Tribal court administrator's or clerk's manuals
- Tribal regulations
- Tribal administrative orders
- Tribal written policies

• Tribal written procedures

• A concise written description of an otherwise unwritten tribal practice (whether or not the practice is based in the Tribe's customs or traditions)

These ''relevant legal materials'' will form the core of the Tribe's application, so please be sure (1) to include all legal materials that are actually relevant to the question whether the Tribe's criminal justice system has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304, and (2) not to include irrelevant materials, as doing so may slow down the review process that the Departments of Justice and the Interior are statutorily required to undertake. In determining which legal materials are relevant, the Department recommends that the Tribe review the materials created or gathered by the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) and the list of substantive questions appended to the Department's June 2013 **Federal Register** notice, *see* 78 FR 35961, 35969–74 (June 14, 2013).

These ''relevant legal materials'' collected from the tribes that successfully apply to participate in Phase Two of the Pilot Project eventually will be made publicly available on the Department of Justice's Web site. The posted materials will serve as a resource for other tribes, including those that may elect to commence exercising SDVCJ after the Pilot Project has concluded.

The Tribe may submit ''relevant legal materials'' in either of two ways. First, if the particular document (e.g., a tribal code provision or court rule) is freely and publicly available on the Internet, the Tribe may provide a full legal citation to the precise material that the Tribe deems relevant to answering the question, such as a specific subsection of a tribal code provision, along with the exact URL (i.e., Web address) where the material can be found on the Internet. Second, the precise material that the Tribe deems relevant to answering the question may be attached to the Tribe's completed Application Questionnaire as an electronic copy (if the Tribe is submitting the application by email) or as a paper copy (if the Tribe is submitting the application by mail).

Please send the completed Application Questionnaire, along with all attachments, by email (or, if necessary, by mail) to:

Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530, E-Mail: *OTJ@usdoj.gov.*

If you have questions or need assistance, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number).

A tribe may apply at any time before March 7, 2015. All applications received at any time within 30 days after the publication of the Department of Justice's final notice in the **Federal Register** (i.e., the final notice to which this Application Questionnaire is appended) will be given the same priority consideration. There is no advantage to be gained by submitting an Application Questionnaire immediately after publication of the final notice. The Tribe should ensure that it completely and accurately answers all questions and attaches all relevant legal materials.

The Department of Justice will not consider an application that is incomplete, but will attempt to notify the Tribe's POC regarding any deficiencies. The Tribe may submit a revised application at any time prior to March 7, 2015. Final decisions regarding whether or when a tribe may commence exercising SDVCJ on an accelerated basis are not appealable.

*Questions*

The Right to Trial by an Impartial Jury

1. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe provide to the defendant the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

The Right to Effective Assistance of Counsel

2. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

The Right to Indigent Defense Counsel

3. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to each indigent defendant, at no cost to the defendant, the right to the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

4. For each licensed defense attorney that the Tribe anticipates will be appointed to represent an indigent defendant in a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (i.e., prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide a list of all jurisdictions in which the defense attorney is licensed to practice law. Please provide a separate list of jurisdictions for each attorney (who can be identified either by name or anonymously as ''Attorney 1,'' ''Attorney 2,'' etc.).

The Right to a Law-Trained, Licensed Judge

5. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to a criminal proceeding presided over by a judge who has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any jurisdiction in the United States? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

6. For each judge that the Tribe anticipates will preside over a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (i.e., prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide (a) a brief description of the judge's legal training to preside over criminal proceedings, and (b) a list of all jurisdictions in which that judge is licensed to practice law. Please provide a separate answer for each judge (who can be identified either by name or anonymously as ''Judge 1,'' ''Judge 2,'' etc.).

The Right to Publicly Available Laws and Rules

7. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe, prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

The Right to Records of the Criminal Proceeding

8. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

The Right to Timely Notice of Federal Habeas Corpus Rights and Privileges

9. Will the Tribe provide to each person detained by order of the Tribe timely notice of the person's rights and privileges to file in a court of the United States a petition for a writ of habeas corpus under 25 U.S.C. 1303 and a petition to stay further detention under 25 U.S.C. 1304(e)? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right to timely notice.

Other Rights Protected by the Indian Civil Rights Act of 1968

10. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe provide to the defendant all applicable rights under the Indian Civil Rights Act of 1968, as amended, including but not limited to (a) the right of the people to be secure in their

persons, houses, papers, and effects against unreasonable search and seizures, and not to be subjected to a warrant unless it was issued upon probable cause, was supported by oath or affirmation, and particularly described the place to be searched and the person or thing to be seized; (b) the right not to be twice put in jeopardy for the same offense; (c) the right not to be compelled to be a witness against himself; (d) the right to a speedy and public trial; (e) the right to be informed of the nature and cause of the accusation; (f) the right to be confronted with the witnesses against him; (g) the right to have compulsory process for obtaining witnesses in his favor; (h) the right to be free from excessive bail; (i) the right to be free from excessive fines; (j) the right against cruel and unusual punishments; (k) the right to the equal protection of the Tribe's laws; (*l*) the right not to be deprived of liberty or property without due process of law; (m) the right not to be subjected to an ex post facto law; and (n) the right to a trial by jury of not less than six persons? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect these rights.

Tribal Criminal Jurisdiction

11. Will the Tribe exercise SDVCJ over a defendant only for criminal conduct constituting, within the meaning of 25 U.S.C. 1304, either (a) an act of domestic violence or dating violence that occurs in the Indian country of the Tribe, or (b) an act that occurs in the Indian country of the Tribe and violates the portion of a protection order that (1) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (2) was issued against the defendant; (3) is enforceable by the Tribe; and (4) is consistent with 18 U.S.C. 2265(b)? * Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

12. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a non-Indian defendant at trial only if the Tribe proves that the alleged victim is an Indian? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

13. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a defendant at trial only if the Tribe proves that the defendant resides in the Indian country of the Tribe; is employed in the Indian country of the Tribe; or is a spouse, intimate partner, or dating partner either of a member of the Tribe or of an Indian who resides in the Indian country of the Tribe? Please answer ''Yes'' or ''No.'' Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Other Considerations

14. This final question is optional. If the Tribe believes it would be helpful to the Departments of Justice and the Interior in fulfilling their statutory duties related to the Pilot Project, the Tribe may provide any additional information or relevant legal materials addressing the Tribe's readiness to commence exercising SDVCJ on an accelerated basis while protecting defendants' rights, consistent with 25 U.S.C. 1304. Additional information or relevant legal materials may focus on any of the following topics: (a) the Tribe's history of compliance with the Indian Civil Rights Act of 1968, as amended; (b) the Tribe's recent history, following the 2010 enactment of 25 U.S.C. 1302(b)–(c), of imposing total terms of imprisonment of more than one year; (c) the Tribe's formal or informal policies for coordinating with federal or state criminal investigators and prosecutors in cases where the Tribe may have concurrent criminal jurisdiction; (d) the Tribe's efforts to combat domestic violence and dating violence, including issuing and enforcing protection orders; (e) the Tribe's efforts to protect the rights and safety of victims of domestic violence and dating violence; (f) the Tribe's methods for summoning, selecting, and instructing jurors; (g) the Tribe's efforts to strengthen law enforcement, prosecution, trial and appellate courts, probation systems, detention and correctional facilities, alternative rehabilitation centers, culturally appropriate services and assistance for victims and their families, criminal codes, rules of criminal procedure, rules of appellate procedure, rules of evidence, and the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases; (h) the Tribe's needs for training, technical assistance, data collection, and evaluation of the Tribe's criminal justice system; (i) the date on which the Tribe would like to commence exercising SDVCJ under the Pilot Project; (j) the Tribe's plans to notify the public before commencing to exercise SDVCJ; and (k) any other pertinent topic that the Tribe would like the Departments of Justice and the Interior to consider when reviewing the Tribe's Application Questionnaire.

*Certifications*

The completeness and accuracy of this Application Questionnaire must be certified by (1) the chief executive officer of the Tribe (e.g., the tribal chairperson, president, governor, principal chief, or other equivalent official); (2) the chief judicial officer of the Tribe (e.g., the tribal chief justice, chief judge, or other equivalent official); (3) the chief legal officer of the Tribe (e.g., the tribal attorney general, attorney, general counsel, or other equivalent official); and (4) the person authorized by the Tribe's governing body to be the Tribe's point of contact (POC) for the Department of Justice in this application process. The POC may be either one of the three officers listed above or a fourth individual selected by the Tribe's governing body. Each of these individuals must sign and certify the Application Questionnaire below.

*Certification of the Tribe's Chief Executive Officer*

1. I am the chief executive officer of _____ [enter the name of the requesting tribe] (''the Tribe'').

2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301–1304, including the amendments made by VAWA 2013.

3. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.

4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature:
Date:
Name:
Title or Position:
Address:
City/State/Zip:
Phone:
FAX:
Email:

*Certification of the Tribe's Chief Judicial Officer*

1. I am the chief judicial officer of _____ [enter the name of the requesting tribe] (''the Tribe'').

2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301–1304, including the amendments made by VAWA 2013.

3. I certify that I have read the final notice on the ''Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence'' published by the Department of Justice in the **Federal Register** on November 29, 2013.

4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.

5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature:
Date:
Name:
Title or Position:
Address:
City/State/Zip:

* A protection order issued by a state, tribal, or territorial court is consistent with 18 U.S.C. 2265(b) if ''such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and . . . reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.'' 18 U.S.C. 2265(b).

Phone:
FAX:
Email:

*Certification of the Tribe's Chief Legal Officer*

1. I am the chief legal officer of _____ [enter the name of the requesting tribe] (''the Tribe'').

2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301–1304, including the amendments made by VAWA 2013.

3. I certify that I have read the final notice on the ''Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence'' published by the Department of Justice in the **Federal Register** on November 29, 2013.

4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.

5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature:
Date:
Name:
Title or Position:
Address:
City/State/Zip:
Phone:
FAX:
Email:

*Certification of the Tribe's Point of Contact*

1. I have been authorized by the governing body of _____ [enter the name of the requesting tribe] (''the Tribe'') to serve as the Tribe's point of contact (POC) with the Department of Justice for purposes of the VAWA Pilot Project.

2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301–1304, including the amendments made by VAWA 2013.

3. I certify that I have read the final notice on the ''Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence'' published by the Department of Justice in the **Federal Register** on November 29, 2013.

4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.

5. I certify that, to assist the Department of Justice in fulfilling its statutory duty to determine whether the criminal justice system of the Tribe has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304, I will make best efforts, for the remainder of the Pilot Project's duration (i.e., prior to March 7, 2015), to promptly answer written or oral questions from the Departments of Justice and the Interior about the Tribe's criminal justice system; to promptly update any answers to this Application Questionnaire if they become incomplete, inaccurate, or outdated; to promptly fix any omissions in the Application Questionnaire; and to promptly submit to the Department of Justice any additions, deletions, or corrections to the Application Questionnaire.

Signature:
Date:
Name:
Title or Position:
Address:
City/State/Zip:
Phone:
FAX:
Email:

[FR Doc. 2013–28653 Filed 11–27–13; 8:45 am]

**BILLING CODE 4410–A5–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Zizhuang Li, M.D.; Decision and Order

On June 10, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Zizhuang Li, M.D. (Applicant), of Leawood, Kansas. GX 5. The Show Cause Order proposed the denial of Applicant's application for a DEA Certificate of Registration as a practitioner, on the ground that his ''registration would be inconsistent with the public interest.'' *Id.* at 1 (citing 21 U.S.C. 823(f)).

As basis for the denial, the Show Cause Order alleged that ''[o]n September 27, 2012, the Mississippi State Board of Medical Licensure (Board) found that from April through August 2010, [Applicant] prescribed controlled substances, including oxycodone, carisoprodol, and alprazolam, outside the course of professional practice to four patients.'' *Id.* Next, the Show Cause Order alleged that the Board found that Applicant ''engaged in unprofessional conduct'' by failing ''to conduct an appropriate risk/benefit analysis for [his] patients,'' and that he also ''failed to document proper written treatment plans.'' *Id.* (citing Miss. Code Ann. §§ 73–25–29(8)(d) & (13); 73–25–83(a)). The Order then alleged that based on its findings, the Board suspended Applicant's medical license for twelve months.[1] *Id.*

On June 10, 2013, the Government attempted to serve the Show Cause Order by certified mail, return receipt requested, addressed to Applicant at the address he provided on his application for receiving mail from the Agency. GX 6, at 1. However, on July 6, 2013, the Government queried the Postal Service's Track and Confirm Web page and determined that the mailing had not been accepted.[2] Accordingly, on July 9, 2013, the Government mailed the Show Cause Order to Applicant at the same address using first class mail. *Id.* That same day, DEA also emailed an electronic version of the Show Cause Order to two email addresses purportedly used by Applicant, including the address which he had provided on his application for registration.[3] *Id.* Neither email was returned as undeliverable or resulted in an error message. *Id.*

Based on the above, I find that the Government has complied with its obligation ''to provide 'notice, reasonably calculated under all the circumstances, to apprise [Applicant] of the pendency of the action and afford [him] an opportunity to present [his] objections.' '' *Jones* v. *Flowers,* 547 U.S. 220, 226 (2006) (quoting *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)); *see also Emilio Luna,* 77 FR 4829, 4830 n.2 (2012) (''[I]t seems relatively clear that when certified mail is returned unclaimed, in most cases, the Government can satisfy its constitutional obligation by simply re-mailing the Show Cause Order by regular first class mail.'') (citing *Jones,* 547 U.S. at 234–35).

On August 20, 2013, the Government submitted its Request for Final Agency Action, along with the Investigative Record. Based on the Government's submission, I further find that more than thirty days have now passed since service of the Show Cause Order was accomplished, and neither Applicant, nor anyone purporting to represent him, has either requested a hearing or submitted a written statement in lieu of a hearing. 21 CFR 1301.43(a) & (c). Accordingly, I find that Applicant has waived his right to a hearing or to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Final Order based on relevant material contained in the Investigative Record submitted by the Government. I make the following findings of fact.

[1] The Show Cause Order also notified Applicant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. GX 5, at 2–3 (citing 21 CFR 1301.43).

[2] On July 12, 2013, the mailing was returned to DEA and marked as ''Return to sender, unclaimed, unable to forward, returned to sender.'' GX 6, at 1.

[3] Regarding the two email addresses, the Diversion Investigator (DI), who investigated the application, ''discovered that [Applicant] gave the Board the email address of *jacksonstone22@hotmail.com* . . . [and] [o]n a residential rental application in San Diego . . . Applicant listed his email address as *zizhuangli@yahoo.com.''* GX 4, at 2. The latter is the same email address Applicant provided on his DEA application.

## Findings

*Applicant's Registration and Licensure Status*

Applicant previously held three DEA Certificates of Registration, pursuant to which he was authorized to dispense controlled substances in schedules II through V. GX 2, at 2; GX 3, at 2. Two of the registrations (at least one of which was for a location in Mississippi) were retired on September 28, 2012, apparently after Applicant voluntarily surrendered them. GX 2. As for the third registration, it was retired on May 1, 2010. *Id.* However, there is no evidence establishing why this registration was retired.

On November 16, 2012, Applicant applied for a new registration at the proposed registered address of 20265 Valley Boulevard, Suite E, Walnut, California. GX 1, at 1. Applicant sought authority limited to dispensing controlled substances in schedules IV and V. GX 2, at 1. It is this application which is at issue in this matter.

Applicant also holds a current Physician's and Surgeon's Certificate issued by the Medical Board of California. GX 1, at 1. Applicant's California license is not due to expire until December 31, 2013.[4] *Id.*

Applicant was also licensed by the Mississippi State Board of Medical Licensure. However, as found below, on June 8, 2012, the Board initiated a proceeding against Applicant, alleging twenty-four counts of violations of Mississippi law. GX 3, at 1. Following a hearing on September 27, 2012, at which Applicant was represented by counsel, the Board suspended his state license for a period of twelve months, which was effective immediately. *Id.* at 23–24. Moreover, ''[n]otwithstanding the twelve (12) month period'' of suspension, the Board ordered that ''Licensee shall not practice medicine in any manner or form, until such time as he appears before this Board, [and] submits proof of compliance with all requirements set forth in [the] order, as well as Miss. Code Ann. [§ ] 73–25–32.'' [5] *Id.* at 23. The Board also required that Applicant complete courses in controlled substance prescribing, recordkeeping, and medical ethics, and that he pay ''all costs incurred in relation to the . . . matter . . . not to exceed $10,000.'' *Id.* at 23–24.

*The Board's Findings*

Based on the evidence presented at the hearing, the Board made extensive findings regarding Applicant's prescribing of controlled substances to four patients. GX 3, at 1–23. With respect to Patient #1, a thirty-three year old male, the Board found that Applicant issued him twenty-one (21) prescriptions for controlled substances (totaling 2,415 dosage units) during the period of April 26 through August 18, 2010. *Id.* at 4. The prescriptions included one prescription for 60 Percocet 10/650mg, six prescriptions for 945 oxycodone 30mg, five prescriptions for 450 Xanax 2mg, 600 Soma (carisoprodol) 350mg, and four prescriptions for 360 Neurontin (gabapentin) 300mg.[6] The Board further found that Applicant repeatedly prescribed multiple drugs to Patient #1 at a visit, including Xanax, Soma, and oxycodone. *Id.* at 5–6.

The Board then identified multiple failures by Applicant to follow its regulations for the ''Use of Controlled Substances for Chronic (Non-Terminal) Pain'' in prescribing to Patient #1. These included that:

(1) Applicant ''allowed the patient to dictate his care by continually prescribing controlled substances for pain notwithstanding [his] recommendation that the patient should have surgery'';

(2) notwithstanding evidence in the patient's medical record that he ''visited multiple pharmacies and physicians in the past,'' the record ''contained no record of prior treatment and there [was] no information . . . suggesting that [Applicant] conducted an appropriate risk/benefit analysis by reviewing his own records . . . or records'' of prior treating physicians;

(3) there was no documentation that Applicant discussed with Patient #1 ''taking medication as prescribed'';

(4) there was no indication that Applicant sought ''outside consultation to determine the origin of the patient's pain,'' or recommended treatment modalities (beyond prescribing controlled substances) other than ''warm baths and heating pads'';

(5) there was ''only one urine drug screen'' in Patient #1's chart, which was done at his initial visit and there were ''[n]o subsequent drugs screens [in] the record to document compliance with treatment'';

(6) Patient #1 ''continued to come early for each visit and [Applicant] continued to write prescriptions on each early visit'';

(7) Patient #1's file ''contained . . . 'red flags' suggesting possible drug abuse by Patient #1''; and

(8) Applicant ''issued Patient #1 prescriptions at times when [he] should not have finished taking the same medication from a previous prescription had the . . . directions been properly followed or the correct dosage . . . taken.''

GX 3, at 7–9.

As for Patient #2, the Board found that from April 6 through August 9, 2010, Applicant ''issued to [him] twenty four (24) prescriptions totaling approximately 2,178 dosage units of controlled substances,'' including six (6) prescriptions for 352 Lortab 10/500mg (hydrocodone/acetaminophen), six prescriptions for 704 Soma (carisoprodol) 350mg, six prescriptions for 704 oxycodone 30mg, and six prescriptions for 418 Xanax 2mg. GX 3, at 9. Here again, the Board's findings show that Applicant repeatedly dispensed prescriptions for all four of these drugs to Patient #2 on a single day.

The Board then identified multiple failures on Applicant's part in complying with its regulations. These included:

(1) Patient #2's ''chart shows very little physical exam conclusions and hardly any pathology . . . which would indicate the therapeutic nature for prescribing the particular controlled substances in the quantities and strengths so noted'';

[4] Pursuant to 5 U.S.C. 556(e) and 21 CFR 1316.59, I take official notice that on December 28, 2012, the California Board issued an Accusation/Petition to Revoke Applicant's state license based on the results of the Mississippi Board's action. That matter is still pending.

I have also taken official notice of the fact that Applicant voluntarily surrendered his Louisiana medical license (MD.204358) on October 8, 2012.

[5] This statute provides that ''[a] person whose license to practice medicine . . . has been revoked or suspended may petition the [Board] to reinstate this license after a period of not less than one (1) year has elapsed from the date of the revocation or suspension.'' Miss. Code Ann. § 73–25–32(1). The statute further requires that the petition ''be accompanied by two (2) or more verified recommendations from physicians . . . licensed by the Board . . . and by two (2) or more recommendations from citizens each having personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed and such facts as may be required by the Board.'' *Id.* § 73–25–32(2).

[6] Carisoprodol did not become a federally controlled substance until January 11, 2012, when its placement into schedule IV of the Controlled Substances Act became effective. *See* DEA, *Schedules of Controlled Substances: Placement of Carisoprodol into Schedule IV,* 76 FR 77330 (2011). However, several DEA final orders had previously discussed the abuse of carisoprodol in conjunction with other controlled substances, including opiates such as oxycodone and hydrocodone, and benzodiazepines, such as alprazolam and diazepam. *See, e.g., Paul H. Volkman,* 73 FR 30630, 30638 (2008) (noting expert's testimony regarding prescribing of drug cocktails of a narcotic, benzodiazepine, and carisoprodol, and that the cocktail, which ''is very popular amongst those individuals who go to doctors' offices to take drugs to abuse them,'' also ''increase[s] the likelihood of sedation, respiratory depression and death.'') (other citations omitted).

Neurontin (gabapentin) is not a federally controlled substance.

(2) Applicant noted in the chart that he recommended that Patient #2 see an orthopedic specialist, yet there was ''no documentation or further mention of whether a referral was made or if Patient #2 saw an orthopedist'';

(3) Applicant issued Patient #2 new prescriptions on June 11, 2010, ''only 18 days after [his] visit on May 24,'' while noting in the chart that the visit had occurred on June 21, 2010, and there was no explanation in the chart for issuing the prescriptions early, nor ''any significant change in the verbal pain scale'' to support the ''increased consumption of the prior issued medications'';

(4) Applicant ''continued to prescribe controlled substances for pain without any analysis regarding the effectiveness of the medications'' and there was ''no documentation of other treatment modalities (other than recommending warms baths and heating pads)'';

(5) Applicant ''allowed Patient #2 to dictate his care by simply continuing previous prescriptions for controlled substances, failing to follow up on his own recommendations regarding referral to an orthopedist, and, at a minimum, failing to recognize non-compliance by the patient''; and

(6) Patient #2's chart ''contained indicators or 'red flags' suggesting possible drug abuse,'' including: (a) Documentation suggesting that Patient #2 had previously been terminated for noncompliance with a treatment plan by a prior pain management physician; (b) a printout from a pharmacy showing that Patient #2 was obtaining controlled substances from multiple doctors; and (c) Applicant ''continued to write new prescriptions for controlled substances at a time when the previous prescriptions for the same medications would not have been completed had the patient followed'' the dosing instructions.

*Id.* at 11–13.

With respect to Patient #3, the Board found that from April 7 through August 2, 2010, Applicant issued twenty-three controlled prescriptions to her ''totaling approximately 2,515 dosage units.'' *Id.* These included five prescriptions for 880 Norco (hydrocodone/apap) 10/325mg, five prescriptions for 600 Soma 350mg, one prescription for 10 oxycodone 15mg, two prescriptions for 35 oxycodone 30mg, five prescriptions for 540 Xanax 2mg, and five prescriptions for 450 Fiorinal with codeine. *Id.* Here again, Applicant issued the patient up to four controlled substance prescriptions at a single visit. *Id.* at 14.

The Board then identified multiple failures on Applicant's part in complying with its regulations. These included:

(1) That the most recent MRI was five years old, and while it showed that Patient #3 had ''degenerative disc and hypertrophy issues along with prolapse of L5–S1,'' there was ''no mention of consultation or referral to a specialist to attempt other modalities of treatment'';

(2) Applicant ''determined that the best course of treatment was to continue the prescriptions previously issued to [her] by prior physicians, along with warm baths and use of heating pads''; however, ''[t]here [was] no . . . justification as to why the patient needed this particular combination of medications in these particular quantities and strengths'';

(3) Patient #3's medical record ''contained no psychiatric analysis to determine the necessity for the use of Xanax. If the Xanax was prescribed for the purpose of muscle relaxation, then there [was] no indication to include Soma in the medication regime'';

(4) Patient #3's file ''contained indicators or 'red flags' suggesting possible drug abuse by'' her, including that she was driving from Kenner, Louisiana to Picayune, Mississippi; that she claimed to have gone to the emergency room (ER) for pain related reasons, but Applicant did not attempt to verify her claim; and that after Patient #3 claimed to have gone to the ER, Applicant added oxycodone 15mg to her medications, and then increased the dosage to 30mg on a subsequent visit, even though Patient #3 reported a ''significant pain reduction and improvement'' during that period; and

(5) Applicant issued Patient #3 new prescriptions ''at times when [she] should not have finished taking the same medication from a previous prescription had the prescription directions been properly followed.''

*Id.* at 15–17.

As for Patient #4, the Board found that from May 19 through August 10, 2010, Applicant issued her twelve (12) controlled substance prescriptions for a total of approximately 1,290 dosage units. *Id.* at 17. These included four (4) prescriptions for 570 Lorcet (hydrocodone/acetaminophen) 10/650mg, four prescriptions for 480 Soma 350mg, and four prescriptions for 240 Xanax 2mg. *Id.* Here again, Applicant issued prescriptions for all drugs at each of her four visits. *Id.* at 17–18.

The Board then identified multiple failures on Applicant's part in complying with its regulations. These included:

(1) That while Patient #4 reported a very high pain level throughout treatment, ''there was no real analgesic response to the medication or improvement in general; and the continued prescribing of opiates and other controlled medications for pain was not supported'';

(2) Patient #4's MRI ''show[ed] some mild degenerative changes,'' but was otherwise ''unremarkable'' and did not support ''the amount of pain the patient was reporting''; however, ''there [was] no outside consultation to determine the etiology of the patient's severe pain'';

(3) there was ''no psychiatric evaluation'' to support the prescribing of Xanax, and if ''Xanax was being prescribed for muscle relaxation, then there [was] no justification for the additional prescribing of Soma'';

(4) Applicant subjected Patient #4 to a single urine drug screen, which occurred at her initial visit; however, given her history, ''it was not appropriate to test [her] once at the beginning of treatment and not . . . during the treatment'';

(5) Applicant ''continued the prescriptions previously issued to [her] by previous physicians and there [was] no indication or justification as to why [she] need[ed] this particular combination of medications in these particular quantities and strengths''; Applicant also recommended no treatment modalities ''[o]ther than controlled substances, warm baths and heating pads'';

(6) Patient #4's file contained various red flags suggesting drug abuse, including that she had been discharged by a Louisiana pain clinic for testing positive on multiple occasions for drugs she had not been prescribed. The red flags included: (a) An incident, four months earlier, when she tested positive for oxycodone, which had not been prescribed to her and she admitted that she used her husband's Percocet; and (b) two incidents, which had occurred only two and three months before Applicant began prescribing to her, in which she attempted to use another person's urine during a urine drug screen. While Applicant obtained these records the day before he first prescribed controlled substances to Patient #4, he did not document having discussed these incidents with her; and

(7) Applicant issued new prescriptions to Patient #4 ''at times when [she] should not have finished taking the same medication from a previous prescription had the prescription directions been properly followed or the correct dosage taken.''

*Id.* at 18–20.

Based on these findings, the Board found Applicant guilty of four counts of

''administering, dispensing, or prescribing . . . narcotic drugs, or other drugs having addiction-forming or addiction-sustaining liability otherwise than in the course of legitimate professional practice.'' *Id.* at 21 (citing Miss. Code Ann. § 73–25–29(3)). It also found Applicant guilty of four counts of ''prescribing controlled substances or other drugs having addiction-forming or addiction-sustaining liability for chronic pain in a non-therapeutic manner.'' *Id.* at 22 (citing *id.* § 73–25–29(13)). The Board further found Applicant guilty of four counts of ''prescribing controlled substances for the treatment of chronic pain to a patient who has consumed or disposed of controlled substances and other drugs having addiction forming or addiction sustaining liability other than in strict compliance with [his] directions.'' *Id.* (citing Miss. Code Ann. § 73–25–29(13)).'' [7]

The Board also found that during his testimony, Applicant ''expressed very little understanding of the disease of addiction and possible drug abuse,'' and that this, when, combined ''with [the] clear evidence'' that he ''failed to comply with the Board's rules . . . increased the risk of harm to the public.'' *Id.* The Board further found that Applicant ''either failed to identify or chose to ignore clear evidence of drug seeking behavior by the very patients he has an obligation to treat, heal and protect.'' *Id.* Finally, the Board found that Applicant ''willingly participated in a medical clinic . . . [which] had [the] primary purpose [of] hand[ing]-out controlled substances.'' *Id.* at 22–23.

**Discussion**

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner's registration may be denied ''if the Attorney General determines that the issuance of such registration . . . would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making this determination, Congress directed that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

*Id.* ''These factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors and may give each factor the weight . . . [I] deem[ ] appropriate in determining whether . . . an application for registration [should be] denied.'' *Id.; see also Kevin Dennis, M.D.,* 78 FR 52787, 52794 (2013); *MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2010).

The Government has the burden of proving, by substantial evidence, that the requirements for the denial of an application, pursuant to 21 U.S.C. 823(f), are met. 21 CFR 1301.44(e). This is so even in a non-contested case. *Gabriel Sanchez, M.D.,* 78 FR 59060, 59063 (2013). Having considered all of the factors,[8] I conclude that the Government's evidence with respect to factors two and four establishes, *prima facie,* that the issuance of a new registration to Applicant ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

*Factor One: The Recommendation of the Appropriate State Licensing Board*

Noting the various findings of the Mississippi Board, the Government argues that ''[i]n light of the Board's Order, factor one weighs heavily in favor of a finding that granting Applicant's . . . registration would be inconsistent with the public interest.'' Request for Final Agency Action, at 4. While the Government is undoubtedly correct that the Board's findings strongly support the denial of Applicant's application—indeed, for reasons explained later, they are conclusive—its contention that factor one supports the denial of the application is misplaced.

Here, Applicant does not seek a new registration in Mississippi, where, because he has not been reinstated to practice medicine, he does not even meet the CSA's threshold requirement that he be ''authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Rather, he seeks registration in California, where, while he is the subject of an Accusation filed by the Medical Board of California (MBC) (which is based on the Mississippi Board's Order), he nonetheless holds a current Physician's and Surgeon's Certificate. Because Applicant seeks registration in California, the MBC, and not the Mississippi Board is the ''appropriate [s]tate licensing board'' for the purpose of factor one.

Here, the MBC has not made a formal recommendation to the Agency as to what action should be taken in this matter. Moreover, Applicant currently holds an active California medical license.

That being said, ''the Agency has long held that possession of state authority is not dispositive of the public interest inquiry.'' *George Mathew,* 75 FR 66138, 66145 (2010), *pet. for rev. denied, Mathew* v. *DEA,* No. 10–73480, slip. op. at 5 (9th Cir. Mar. 16, 2012). Instead, ''the Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.'' *Mortimer Levin,* 57 FR 8680, 8681 (1992). Thus, the fact that Applicant currently has an active California license neither weighs in favor of, or against a finding that issuing a new registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

*Factors Two and Four: The Applicant's Experience in Dispensing Controlled Substances and Compliance With Applicable State or Federal Laws*

To effectuate the dual goals of conquering drug abuse and controlling both the legitimate and illegitimate traffic in controlled substances, ''Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.'' *Gonzales* v. *Raich,* 545 U.S. 1, 13 (2005). With respect to the dispensing of controlled substances, the closed system is maintained by a longstanding Agency regulation, which provides that ''[a] prescription for a controlled substance [is not] effective [unless it is] issued for a legitimate medical purpose by an individual practitioner acting in the usual course of [his] professional practice.'' 21 CFR 1306.04(a). The

[7] In addition, the Board found Applicant guilty of four counts of ''failing to conduct an appropriate risk/benefit analysis by review of previous medical history which was provided by another treating physician, which indicates there is a need for long-term controlled substances therapy,'' as well as ''fail[ing] to clearly enter into the record the analysis and a consultation/referral report which determines the underlying pathology or cause of the chronic pain.'' GX 3, at 21 (citing Miss. Code Ann. § 73–25–29(13)). Finally, the Board found Applicant guilty of four counts of ''failing to document a written treatment plan which contains stated objectives as a measure of successful treatment and planned diagnostic evaluations, e.g., psychiatric evaluation or other treatments.'' *Id.* at 21–22 (citing Miss. Code Ann. § 73–25–29(13)).

[8] Having considered all of the factors, I conclude that it is not necessary to make findings with respect to factors three (the applicant's conviction record) and five (such other conduct which may threaten public health and safety). *See Jose G. Zavaleta, M.D.,* 76 FR 49506, 49507 (2011).

regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id.*

As the Supreme Court recently explained, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)); *see also United States* v. *Alerre,* 430 F.3d 681, 691 (4th Cir. 2005), *cert. denied,* 547 U.S. 1113 (2006) (prescription requirement stands as a proscription against doctors acting not ''as a healer[,] but as a seller of wares'').

As found above, following a hearing before the Mississippi Board, at which Applicant was represented by counsel, the Board made extensive factual findings regarding his treatment of four patients. Most significantly, the Board found Applicant guilty of four counts of ''administering, dispensing, or prescribing . . . narcotic drugs, or other drugs having addiction-forming or addiction-sustaining liability *otherwise than in the course of legitimate professional practice.''* GX 3, at 21 (citing Miss. Code Ann. § 73–25–29(3)) (emphasis added). It also found Applicant guilty of four counts of ''prescribing controlled substances or other drugs having addiction-forming or addiction-sustaining liability for chronic pain *in a non-therapeutic manner.*'' *Id.* at 22 (citing *id.* § 73–25–29(13)) (emphasis added). The Board further found Applicant guilty of four counts of ''prescribing controlled substances for the treatment of chronic pain to a patient who has consumed or disposed of controlled substances and other drugs having addiction forming or addiction sustaining liability other than in strict compliance with [his] directions.'' *Id.* (citing Miss. Code Ann. § 73–25–29(13)).

Because Applicant had a full and fair opportunity to litigate the issues raised in the Mississippi Board proceeding—and in fact, was represented by counsel and did apparently litigate the issues—the Board's findings are entitled to preclusive effect in this proceeding. *See Robert L. Dougherty, M.D.,* 76 FR 16823, 16830 (2011) (citing cases); *see also Univ. of Tenn.* v. *Elliot,* 478 U.S. 788, 797–98 (1986) (''When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata[.]'') (internal quotations and citations omitted); *David A. Ruben, M.D.,* 78 FR 38363, 38365–67 (2013) (collateral estoppel precludes a party from re-litigating issues of fact or law that were previously decided against him in a state board proceeding); *cf. Jose G. Zavaleta, M.D.,* 78 FR 27431, 27431–34 (2013) (''[a]llowing an applicant to relitigate issues which he/she had a full and fair opportunity to litigate in a prior proceeding but chose not to'' will likely result in unnecessary waste of agency resources).

Moreover, the Board's findings that Applicant prescribed controlled substances ''otherwise than in the course of legitimate professional practice'' and ''in a non-therapeutic manner,'' in violation of State law, also establish that he acted outside of ''the usual course of professional practice'' and without a ''legitimate medical purpose'' in prescribing to the four patients identified in the Board's Order, and thus also violated the CSA.[9] 21 CFR 1306.04(a); *Cf. Kenneth Harold Bull,* 78 FR 62666, 62674–75 n. 9 (2013) (rejecting ALJ's conclusion that state board's finding established violations of 21 CFR 1306.04(a), noting that state board's ''injudicious prescribing'' standard was ''not equivalent to the standard imposed under 21 CFR 1306.04(a)''). As the Board further found, Applicant ''willingly participated in a medical clinic . . . [which] had [the] primary purpose [of] hand[ing]-out controlled substances.'' GX 3, at 22–23. Thus, I conclude that the State Board's findings support a finding that Applicant knowingly and intentionally diverted controlled substances. *See* 21 U.S.C. 841(a)(1). I therefore hold that the Government has met its *prima facie* burden of showing why issuing a new registration to Applicant ''would be inconsistent with the public interest.'' *Id.* § 823(f).[10]

It is acknowledged that Applicant does not seek authority to dispense controlled substances in schedules II and III, but rather only those in schedule IV and V. GX 2, at 1. Be that as it may, the findings of the State Board conclusively establish that his misconduct is egregious and that he cannot be entrusted with authority to dispense controlled substances in any schedule, a conclusion which stands unrefuted given that Applicant waived his right to a hearing or to submit a written statement. Accordingly, because there is no evidence that Applicant acknowledges his misconduct and has undertaken any remedial measures,[11] I conclude that denial of his application is necessary to protect the public interest. *See, e.g., Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (''where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct''); *see also Jose G. Zavaleta, M.D.,* 76 FR 49506, 49507 (2011) (denying

[9] In addition, the Board found Applicant guilty of four counts of ''failing to conduct an appropriate risk/benefit analysis by review of previous medical history which was provided by another treating physician, which indicates there is a need for long-term controlled substances therapy'' and by ''fail[ing] to clearly enter into the record the analysis and a consultation/referral report which determines the underlying pathology or cause of the chronic pain.'' GX 3, at 21 (citing Miss. Code Ann. § 73–25–29(13)). Finally, the Board found Applicant guilty of four counts of ''failing to document a written treatment plan which contains stated objectives as a measure of successful treatment and planned diagnostic evaluations, e.g., psychiatric evaluation or other treatments.'' *Id.* at 21–22 (citing Miss. Code Ann. § 73–25–29(13)). Not that it is needed given the Board's findings which are discussed above, these findings provide additional support for the conclusion that Applicant acted outside the usual course of professional practice and lacked a legitimate medical purpose in prescribing controlled substances to the four patients. 21 CFR 1306.04(a).

[10] The Board also found that Applicant ignored multiple red flags that the four patients were abusing controlled substances. These included that the patients sought early refills and did not comply with his dosing instructions, two patients had been terminated by prior physicians for non-compliance (one of whom was obtaining controlled substances from multiple doctors), another patient was driving a long distance to see him, and another patient had not only tested positive for a controlled substance which had not been prescribed to her, but twice attempted to use another person's urine when subjected to a urine drug screen.

These findings provide further support for the conclusion that issuing a new registration to Applicant ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f). As the Administrator has held, ''[a] practitioner who ignores the warning signs that [his] patients are either personally abusing or diverting controlled substances commits 'acts inconsistent with the public interest,' 21 U.S.C. 824(a)(4), even if [he] is merely gullible or naive.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 460 n.3 (2009); *see also Bienvenido Tan, M.D.,* 76 FR 17673, 17689 (2011) (quoting *Paul J. Caragine, Jr.,* 63 FR 51592, 51601 (1998)) (''Just because misconduct is unintentional, innocent or devoid of improper motivation, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify'' the revocation of an existing registration or the denial of an application for a registration.).

[11] As found above, the Mississippi Board required Applicant, as a condition of reinstatement, to take courses in controlled substance prescribing, recordkeeping, and medical ethics. There is, however, no evidence that he has taken any of these courses.

application for DEA registration in schedules IV and V where doctor violated federal law by, *inter alia,* issuing prescriptions outside the usual course of professional practice). Accordingly, I will order that his application be denied.

**Order**

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) and 0.104, I order that the application of Zizhuang Li, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective immediately.

Dated: November 21, 2013.

**Thomas M. Harrigan,**

*Deputy Administrator.*

[FR Doc. 2013–28525 Filed 11–27–13; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0224]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; National Youth Gang Survey

**ACTION:** 60-Day Notice.

The U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''60 days'' until January 28, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated reponse time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Dennis Mondoro, (202) 514–3913, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate 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.
- 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.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a currently approved collection.
2. *Title of the Form/Collection:* National Youth Gang Survey.
3. *Agency form number, if any, and the applicable component of the U.S. Department of Justice sponsoring the collection:* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Local, state, or tribal law enforcement agencies.

*Other:* None.

*Abstract:* This collection will gather information related to youth and their activities for research and assessment purposes.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,100 respondents will take ten minutes each to complete the survey.
6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 424 total annual burden hours associated with this collection.

If additional information is required, contact Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3W–1407B, Washington, DC 20530.

Dated: November 25, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, United States Department of Justice.*

[FR Doc. 2013–28606 Filed 11–27–13; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Administration and Management; Agency Information Collection Activities; Comment Request; Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is soliciting comments concerning an Information Collection Request (ICR) proposing to extend Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., authority to conduct the information collection titled, ''Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden.

**DATES:** Submit written comments on or before January 28, 2014.

**ADDRESSES:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) to request a free copy of this ICR that includes applicable supporting documentation providing a description of the likely respondents, proposed frequency of response, and estimated total burden. Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** The DOL headquarters building, the Frances Perkins Building (FPB), has conference and meeting capabilities located in its public space areas that non-DOL entities may request to use. The Administrator of the General Services Administration set forth terms and conditions delegating FPB operation to the DOL, Office of the Assistant Secretary for

Administration and Management (OASAM). The delegation sets forth conditions authorizing the DOL to issue occasional use permits for FPB public space. The delegation is also subject to applicable standard operating procedures for Government-owned real properties. More specifically, the DOL may only issue occasional use permits to organizations engaging in cultural, educational, or recreational activities. These permits are generally not available for commercial purposes. Any person or organization wishing to use a FPB public area must file a permit application with the DOL Conference Rooms and Services Center. Applicants must submit the following information: (a) Applicant's full name, mailing address, and telephone number; (b) organization sponsoring the proposed activity; (c) individual(s) responsible for supervising the activity; (d) documentation showing the applicant is authorized to represent the sponsoring organization; and (e) a description of the proposed activity, including dates and times during which it is to be conducted and the number of persons to be involved. OASAM policies and procedures concerning FPB public space are set forth in DOL Manual Series section 2–510 and an application—Form DL–1–6062B, Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1225–0087. The current approval is scheduled to expire on March 31, 2014; however, the DOL intends to seek continued approval for this collection of information for an additional three years.

The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. 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 ICR. Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–OASAM.

*Type of Review:* Extension without change of a currently approved collection.

*Title of Collection:* Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.

*Form:* Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building (Form DL–1–6062B).

*OMB Control Number:* 1225–0087.

*Affected Public:* Private Sector—not for-profit institutions.

*Estimated Number of Respondents:* 5.

*Frequency:* On occasion.

*Total Estimated Annual Responses:* 5.

*Estimated Average Time per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 1 hour.

*Total Estimated Annual Other Cost Burden:* $0.

Dated: November 25, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–28656 Filed 11–27–13; 8:45 am]

**BILLING CODE 4510–23–P**

---

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cranes and Derricks in Construction Standard

**ACTION:** Notice.

**SUMMARY:** On November 29, 2013, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) revision titled, ''Cranes and Derricks in Construction Standard,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before January 2, 2014.

**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 of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201311-1218-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks PRA authorization for the current information collection requirements contained in the Cranes and Derricks Standard codified at 29 CFR part 1926 subparts CC and M. These requirements mandate that a covered employer produce and maintain records documenting controls and other measures taken to protect workers from hazards related to cranes and derricks used in construction. Accordingly, a construction business with workers who operate or work in the vicinity of cranes and derricks must have, as applicable, the following documents on file and available at the job site: equipment ratings, employee training records, written authorizations from qualified individuals, and qualification program audits. During an inspection, the OSHA will have access to the records to determine compliance under conditions specified by the Standard. This ICR has been classified as a revision, because the OSHA has revised the ICR to exempt digger derricks used in construction work subject to 29 CFR part 1926 subpart V, in accordance with a Final Rule published in the **Federal Register** on May 29, 2013 (78 FY 32110).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0261. The current approval is scheduled to expire on November 30, 2013; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 13, 2013 (78 FR 56742).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by January 2, 2014. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0261. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–OSHA.

*Title of Collection:* Cranes and Derricks in Construction Standard.

*OMB Control Number:* 1218–0261.

*Affected Public:* Private Sector—businesses or other for profits.

*Total Estimated Number of Respondents:* 209,851.

*Total Estimated Number of Responses:* 2,755,354.

*Total Estimated Annual Burden Hours:* 386,970.

*Total Estimated Annual Other Costs Burden:* $2,185,926.

Dated: November 25, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–28618 Filed 11–27–13; 8:45 am]

BILLING CODE 4510–26–P

---

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure

**ACTION:** Notice.

**SUMMARY:** On November 29, 2013, the Department of Labor (DOL) will submit the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

**DATES:** Submit comments on or before January 2, 2014.

**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 of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201309-1210-003* (this link will only become active on November 30, 2013) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** The Patient Protection and Affordable Care Act (ACA), Public Law 111–148, section 1251 provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain ACA provisions. Regulations 29 CFR 2590.715–1251(a)(2), implementing the ACA grandfathered plan provision, requires a grandfathered health plan to include a statement in any plan material provided to participants or beneficiaries stating the plan's intent to be a

grandfathered health plan within the meaning of ACA section1251.

To maintain its status as a grandfathered health plan, regulations 29 CFR 2590.715–1251(a)(3) requires the plan or issuer to maintain records documenting the terms of the plan or health insurance coverage in effect on March 23, 2010, and any other documents that are necessary to verify, explain, or clarify grandfathered health plan status. The plan or issuer must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0140.

The current approval for this collection is scheduled to expire on November 30, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2013, (78 FR 30333).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by January 2, 2014. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0140. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure.

*OMB Control Number:* 1210–0140.

*Affected Public:* Private Sector—businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of Responses:* 56,457,000.

*Total Estimated Annual Burden Hours:* 1,077,800.

*Total Estimated Annual Other Costs Burden:* $561,000.

Dated: November 22, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–28557 Filed 11–27–13; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Worker Classification Survey; Correction

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Labor published a document in the **Federal Register** on November 8, 2013, announcing submission of the Wage and Hour Division sponsored information collection request (ICR) proposal titled, ''Worker Classification Survey,'' to the Office of Management and Budget for review and approval for use in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., and to invite comments on the ICR. The document contained an incorrect URL to access a copy of the ICR free of charge via the Internet.

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Correction**

In the **Federal Register** of November 8, 2013, in FR Doc. 2013–26746 on page 67196, in the first column, correct the first paragraph of the **ADDRESSES** caption to read:

A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201303–1235–002* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Dated: November 14, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–28556 Filed 11–27–13; 8:45 am]

**BILLING CODE 4510–27–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Proposed Extension of Information Collection Requests Submitted for Public Comment

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed 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. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

**DATES:** Written comments must be submitted to the office shown in the Addresses section on or before January 28, 2014.

**ADDRESSES:** G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington,

DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**I.**

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transactions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Advance Notice of Rescission.

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

*OMB Number:* 1210–0141.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions.

*Respondents:* 100.

*Responses:* 1,600.

*Estimated Total Burden Hours:* 26.

*Estimated Total Burden Cost (Operating and Maintenance):* $400.

*Description:* Section 2712 of the PHS Act, as added by the Affordable Care Act, and the Department's interim final regulation (26 CFR 54.9815–2712, 29 CFR 2590.715–2712, 45 CFR 147.2712) provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and the interim final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group or individual insurance market, or self-insured coverage. The rules also apply regardless of any contestability period of the plan or issuer.

PHS Act section 2712 adds a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under the interim final regulations, even if prior notice is provided, rescission is only permitted in cases of fraud or an intentional misrepresentation of a material fact as permitted under the cited provisions.

The interim final regulations provide that a group health plan, or a health insurance issuer offering group health insurance coverage, must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group. The ICR was approved by the Office of Management and Budget (OMB) under OMB Control Number 1210–0141 and is scheduled to expire on February 28, 2014.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Affordable Care Act Patient Protection Notice.

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

*OMB Number:* 1210–0142.

*Affected Public:* Businesses or other for-profits; Not-for-profit institutions.

*Respondents:* 261,680.

*Responses:* 6,186,404.

*Estimated Total Burden Hours:* 33,000.

*Estimated Total Burden Cost (Operating and Maintenance):* $48,000.

*Description:* Section 2719A of the PHS Act, as added by the Affordable Care Act, and the Department's interim final regulation (29 CFR 2590.715–2719A), states that if a group health plan, or a health insurance issuer offering group or individual health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer must permit each participant, beneficiary, or enrollee to designate any participating primary care provider who is available to accept the participant, beneficiary, or enrollee.

When applicable, it is important that individuals enrolled in a plan or health insurance coverage know of their rights to (1) choose a primary care provider or a pediatrician when a plan or issuer requires participants or subscribers to designate a primary care physician; or (2) obtain obstetrical or gynecological care without prior authorization. Accordingly, paragraph (a)(4) of the interim final regulations requires such plans and issuers to provide a notice to participants (in the individual market, primary subscribers) of these rights when applicable. Model language is provided in the interim final regulations. The notice must be provided whenever the plan or issuer provides a participant with a summary plan description or other similar description of benefits under the plan or health insurance coverage, or in the individual market, provides a primary subscriber with a policy, certificate, or contract of health insurance. The ICR was approved by OMB under OMB Control Number 1210–0142 and is scheduled to expire on February 28, 2014.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Suspension of Pension Benefits Regulation Pursuant to 29 CFR 2530.203–3.

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

*OMB Number:* 1210–0048.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 44,222.

*Responses:* 173,560.

*Estimated Total Burden Hours:* 147,129.

*Estimated Total Burden Cost (Operating and Maintenance):* $58,108.

*Description:* Section 203(a)(3)(B) of ERISA governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, the Department issued a regulation which describes the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203–3). In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found (i.e., 29 CFR 2530.203–3). In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits. The ICR was approved by OMB under

OMB Control Number 1210–0048 and is scheduled to expire on June 30, 2014.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Prohibited Transaction Exemption (PTE) 81–8 for Investment of Plan Assets in Certain Types of Short-Term Investments.

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

*OMB Number:* 1210–0061.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 61,000.

*Responses:* 305,000.

*Estimated Total Burden Hours:* 76,000.

*Estimated Total Burden Cost (Operating and Maintenance):* $87,000.

*Description:* PTE 81–8 permits the investment of plan assets that involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan in certain types of short-term investments. These include investments in banker's acceptances, commercial paper, repurchase agreements, certificates of deposit, and bank securities. Absent the exemption, certain aspects of these transactions might be prohibited by section 406 and 407(a) of the Employee Retirement Income Security Act (ERISA).

In order to ensure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the conditions of the exemption have been satisfied, the Department has included in the exemption two basic disclosure requirements. Both affect only the portion of the exemption dealing with repurchase agreements. The first requirement calls for the repurchase agreements between the seller and the plan to be in writing. The second requirement obliges the seller of such repurchase agreements to agree to provide financial statements to the plan at the time of the sale and as future statements are issued. The seller must also represent, either in the repurchase agreement or prior to the negotiation of each repurchase agreement transaction, that there has been no material adverse change in the seller's financial condition since the date that the most recent financial statement was furnished which has not been disclosed to the plan fiduciary with whom the written agreement is made.

Without the recording and disclosure requirements included in this ICR, participants and beneficiaries of a plan would not be protected in their investments, the Department would be unable to monitor a plan's activities for compliance, and plans would be at a disadvantage in assessing the value of certain short-term investment activities. The ICR was approved by OMB under OMB Control Number 1210–0061 and is scheduled to expire on June 30, 2014.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* PTE 96–62—Process for Expedited Approval of an Exemption for Prohibited Transactions.

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

*OMB Number:* 1210–0098.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 33.

*Responses:* 15,279.

*Estimated Total Burden Hours:* 295.

*Estimated Total Burden Cost (Operating and Maintenance):* $51,000.

*Description:* Section 408(a) of ERISA provides that the Secretary of Labor may grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA, and directs the Secretary to establish an exemption procedure with respect to such provisions. On July 31, 1996, the Department published PTE 96–62, which, pursuant to the exemption procedure set forth in 29 CFR 2570, subpart B, permits a plan to seek approval on an accelerated basis of otherwise prohibited transactions. A PTE will only be granted on the conditions that the plan demonstrate to the Department that the transaction is substantially similar to those described in at least two prior individual exemptions granted by the Department and that it presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries. This ICR is intended to provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA, and to provide affected parties with the opportunity to comment on the proposed transaction, while at the same time reducing the regulatory burden associated with processing individual exemptions for transactions prohibited under ERISA. The ICR was approved by OMB under OMB Control Number 1210–0098 and is scheduled to expire on June 30, 2014.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* PTE 98–54—Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

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

*OMB Number:* 1210–0111.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 35.

*Responses:* 420,000.

*Estimated Total Burden Hours:* 4,200.

*Estimated Total Burden Cost (Operating and Maintenance):* $0.

*Description:* PTE 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, that are parties in interest with respect to such plans, pursuant to standing instructions. In the absence of an exemption, foreign exchange transactions pursuant to standing instructions would be prohibited under circumstances where the bank or broker-dealer is a party in interest or disqualified person with respect to the plan under ERISA or the Internal Revenue Code.

The class exemption has five basic information collection requirements. The first requires the bank or broker-dealer to maintain written policies and procedures for handling foreign exchange transactions for plans for which it is a party in interest, which policies and procedures ensure that the party acting for the bank or broker-dealer knows it is dealing with a plan. The second requires the transactions to be performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan. The third requires that the bank or broker-dealer provides the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and de minimis purchase and sale transactions prior to the execution of a transaction. The fourth requires the bank or broker-dealer to furnish the authorizing fiduciary a written confirmation statement with respect to each covered transaction within five days after execution. The fifth requires the bank or broker-dealer to maintain records necessary for plan fiduciaries, participants, the Department, and the Internal Revenue Service, to determine whether the conditions of the exemption are being met for a period of six years from the date of execution of a transaction.

By requiring that records pertaining to the exempted transaction be maintained for six years, this ICR ensures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions can be confirmed. The exemption affects participants and beneficiaries of the plans that are involved in such

transactions, as well as, certain banks, broker-dealers, and domestic affiliates thereof. The ICR was approved by OMB under OMB Control Number 1210–0111 and is scheduled to expire on June 30, 2014.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* Delinquent Filer Voluntary Compliance Program.

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

*OMB Number:* 1210–0089.

*Affected Public:* Businesses or other for-profits.

*Respondents:* 12,322.

*Responses:* 12,322.

*Estimated Total Burden Hours:* 616.

*Estimated Total Burden Cost (Operating and Maintenance):* $676,712.

*Description:* The Secretary of Labor has the authority, under section 502(c)(2) of ERISA, to assess civil penalties of up to $1,000 a day against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA-related regulations. Pursuant to 29 CFR 2560.502c–2 and 2570.60 *et seq.,* EBSA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed $50 per day for each day an annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing.

Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of these civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department implemented the Delinquent Filer Voluntary Compliance (DFVC) Program (the Program) on April 27, 1995 (60 FR 20873). Under the Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

This ICR covers the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the means by which each penalty payment is associated with the appropriate plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending a photocopy of the delinquent Form 5500 annual report that has been filed, along with the penalty payment.

Under current regulations, apprenticeship and training plans may be exempted from the reporting and disclosure requirements of Part 1 of Title I, and certain pension plans maintained for highly compensated employees, commonly called ''top hat'' plans, may comply with these reporting and disclosure requirements by using an alternate method by filing a one-time identifying statement with the Department. The DFVC Program provides that apprenticeship and training plans and top hat plans may, in lieu of filing any past due annual reports and paying otherwise applicable civil penalties, complete and file specific portions of a Form 5500, file the identifying statements that were required to be filed, and pay a one-time penalty. The ICR was approved by OMB under OMB Control Number 1210–0089 and is scheduled to expire on July 31, 2014.

## II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections 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., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: November 15, 2013.

**Joseph S. Piacentini,**

*Director, Office of Policy and Research, Employee Benefits Security Administration.*

[FR Doc. 2013–28568 Filed 11–27–13; 8:45 am]

BILLING CODE 4510–29–P

---

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**[OMB Control No. 1219–0143]**

### Proposed Information Collection; Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN)

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, 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 continuing collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection for updating Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN).

**DATES:** All comments must be postmarked or received by midnight Eastern Standard Time on January 28, 2014.

**ADDRESSES:** Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number [MSHA–2013–0030].
- *Regular Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939.

• *Hand Delivery:* MSHA, 1100 Wilson Boulevard, Room 2176, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Sheila McConnell, Deputy Director, Office of Standards, Regulations, and Variances, MSHA, at *McConnell.Sheila.A@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 101(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires the Secretary to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. Under section 103(a)(2), authorized representatives of the Secretary of Labor or Secretary of Health and Human Services must make frequent inspections and investigations in coal or other mines each year for the purpose of gathering information with respect to mandatory health or safety standards.

The Mine Safety and Health Administration (MSHA) issues certifications, qualifications and approvals to the nation's miners to conduct specific work within the mines. Miners requiring qualification or certification from MSHA will register for an ''MSHA Individual Identification Number'' (MIIN). This unique number is used in place of individual Social Security numbers (SSNs) for all MSHA collections. The MIIN identifier fulfills Executive Order 13402, Strengthening Federal Efforts Against Identity Theft, which requires Federal agencies to better secure government held data.

## II. Desired Focus of Comments

MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

• Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''**Federal Register** Documents'' on the right side of the screen by selecting ''New and Existing Information Collections and Supporting Statements''. The document will be available on MSHA's Web site for 60 days after the publication date of this notice, and on *http://www.regulations.gov.* Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed.

The public may also examine publicly available documents at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington VA.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

## III. Current Actions

This request for collection of information contains provisions for the extension of the Information Collection Request Submitted for Public Comment and Recommendations; Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN). MSHA does not intend to publish the results from this information collection and will display the expiration date on the instrument.

There are no certification exceptions identified and this information collection and the collection of this information does not employ statistical methods.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Qualification/Certification Program Request for MSHA Individual Identification Number (MIIN).

*OMB Number:* 1219–0143.

*Affected Public:* Business of other for-profit.

*Total Number of Respondents:* 16,000.

*Frequency:* On occasion.

*Total Number of Responses:* 16,000.

*Total Burden Hours:* 1,333 hours.

*Total Annual Respondent or Recordkeeper Cost Burden:* $752.

*MSHA Forms:* MSHA Form 5000–46, MSHA Individual Identification Number Request (MIIN).

Comments submitted in response to this notice will be summarized and 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: November 25, 2013.

**George F. Triebsch,**

*Certifying Officer.*

[FR Doc. 2013–28634 Filed 11–27–13; 8:45 am]

**BILLING CODE 4510–43–P**

---

# NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2014–005]**

## Advisory Committee on the Records of Congress; Meeting

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Legislative Archives, Presidential Libraries, and Museum Services (LPM).

**DATES:** The meeting will be held on December 9, 2013, from 10 a.m. to 11:30 a.m.

**ADDRESSES:** National Archives, 700 Pennsylvania Ave. NW., Room 105

**SUPPLEMENTARY INFORMATION:**

## Agenda

(1) Chair's Opening Remarks—Clerk of the U.S. House of Representatives

(2) Recognition of Co-chair—Secretary of the U.S. Senate

(3) Recognition of the Archivist of the United States

(4) Approval of the minutes of the last meeting

(5) Senate Archivist's report—Karen Paul

(6) House Archivist's report—Robin Reeder

(7) Center Update—Richard Hunt

(8) Other current issues and new business

The meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Center for Legislative Archives (202) 357–5350, Sharon Fitzpatrick for NARA location: *sharon.fitzpatrick@nara.gov.*

Dated: November 25, 2013.

**Patrice Murray,**

*Acting Committee Management Officer.*

[FR Doc. 2013–28691 Filed 11–27–13; 8:45 am]

**BILLING CODE 7515–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0162]**

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 14, 2013 (78 FR 49551).

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* 10 CFR Part 21, ''Reporting of Defects and Noncompliance.''
3. *Current OMB approval number:* 3150–0035.
4. *The form number if applicable:* Not applicable.
5. *How often the collection is required:* On occasion. Defects and noncompliance are reportable as they occur.
6. *Who will be required or asked to report:* Individual directors and responsible officers of firms constructing, owning, operating, or supplying the basic components of any facility or activity licensed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended, to report immediately to the NRC the discovery of defects in basic components or failures to comply that could create a substantial safety hazard.
7. *An estimate of the number of annual responses:* 447 (96 reporting responses + 1 third party disclosure response + 350 recordkeepers).
8. *The estimated number of annual respondents:* 350.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 34,705 hours (9,420 hours reporting + 25,190 hours recordkeeping + 95 hours third-party disclosure).
10. *Abstract:* Part 21 of Title 10 of the *Code of Federal Regulations,* requires each individual, corporation, partnership, commercial grade dedicating entity, or other entity subject to the regulations in this part to adopt appropriate procedures to evaluate deviations and failures to comply to determine whether a defect exists that could result in a substantial safety hazard. Depending upon the outcome of the evaluation, a report of the defect must be submitted to the NRC. Reports submitted under 10 CFR Part 21 are reviewed by the NRC staff to determine whether the reported defects or failures to comply in basic components at the NRC licensed facilities or activities are potentially generic safety problems. These reports have been the basis for the issuance of numerous NRC Generic Communications that have contributed to the improved safety of the nuclear industry. The records required to be maintained in accordance with 10 CFR Part 21 are subject to inspection by the NRC to determine compliance with the subject regulation.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 30, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0035), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 20th day of November, 2013.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer,*

Office of Information Services.

[FR Doc. 2013–28602 Filed 11–27–13; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0129]**

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 8, 2013 (78 FR 48501).

1. *Type of submission, new, revision, or extension:* New.
2. *The title of the information collection:* Suspicious Activity Reporting using the Protected Web Server (PWS).
3. *Current OMB approval number:* 3150–XXXX.
4. *The form number if applicable:* Not applicable.
5. *How often the collection is required:* On occasion. Reporting is done on a voluntary basis, as suspicious incidents occur.
6. *Who will be required or asked to report:* Nuclear power reactor licensees provide the majority of reports, but other entities that may voluntarily send reports include fuel facilities, independent spent fuel storage installations, decommissioned power reactors, power reactors under construction, research and test reactors, agreement states, non-agreement states, as well as users of byproduct material (e.g. departments of health, medical centers, steel mills, well loggers, and radiographers.)
7. *An estimate of the number of annual responses:* 339.

8. *The estimated number of annual respondents:* 50.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 678 hours.

10. *Abstract:* The NRC licensees voluntarily report information on suspicious incidents on an ad-hoc basis, as these incidents occur. This information is shared with authorized nuclear industry officials and Federal, State, and local government agencies using PWS. Information provided by licensees is considered OFFICIAL USE ONLY and is not made public.

The public may examine and have copied for fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 30, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this *20th* day of *November,* 2013.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2013–28603 Filed 11–27–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0258]**

## Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 4 ''Nondiscrimination in Federally Assisted Commission Programs.''

2. *Current OMB approval number:* 3150–0053.

3. *How often the collection is required:* Provisions for this collection are covered in Section 4.331 of Title 10 of the *Code of Federal Regulations* (10 CFR) Compliance Reviews, which indicates that the NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. The NRC may conduct these reviews even in absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

4. *Who is required or asked to report:* Recipients of Federal Financial Assistance provided by the NRC (including Educational Institutions, Other Nonprofit Organizations receiving Federal Assistance, and Agreement States.

5. *The number of annual respondents:* 200.

6. *The number of hours needed annually to complete the requirement or request:* 3,600 hours (3,000 hrs for reporting (5 hrs per respondent) and 600 hrs for recordkeeping (3 hrs per recordkeeper)).

7. *Abstract:* The regulations under 10 CFR Part 4 implement the provisions of Title VI of the Civil Rights Act of 1964, Public Law 88–352; (78 Stat. 241; 42 U.S.C. 2000a note), Title IV of the Energy Reorganization Act of 1974, Public Law 93–438, (88 stat. 1233; 42 U.S.C. 5801 note), which relate to nondiscrimination with respect to race, color, national origin or sex in any program or activity receiving Federal financial assistance from NRC; Section 504 of the Rehabilitation Act of 1973, as amended, Public Law 93–112 (87 Stat. 355; 29 U.S.C. 701 note), Public Law 95–602 (92 Stat. 2955; 29 U.S.C. 701 note) which relates to nondiscrimination with respect to disability in any program or activity receiving Federal financial assistance; and the Age Discrimination Act of 1975, as amended, Public Law 94–135 (89 Stat. 713; 42 U.S.C. 3001 note), Public Law 95–478 (92 Stat. 1513; 42 U.S.C. 3001 note), which relates to nondiscrimination on the basis of age in any program or activity receiving Federal financial assistance.

Submit, by January 28, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0258. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0258. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–

6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 20th day of November, 2013.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer. Office of Information Services.*

[FR Doc. 2013–28601 Filed 11–27–13; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0260]**

## Update of the Office of Nuclear Reactor Regulation's Electronic Operating Reactor Correspondence

The U.S. Nuclear Regulatory Commission (NRC) is issuing this **Federal Register** notice to inform the public of a slight change in the manner of distribution of publicly available operating reactor licensing correspondence, effective December 9, 2013. Official agency records will continue to be made publically available in accordance with the agency's policy in the NRC's Agencywide Documents Access and Management System, which may be accessed through the NRC's Web page *http://www.nrc.gov.*

On September 30, 2008, the Division of Operating Reactor Licensing began transmitting correspondence to addressees and subscribers through a computer-based email distribution system. Since then, the regional offices and other divisions within the NRC have been using this email distribution system. To be consistent with the NRC Management Directive 3.4, ''Release of Information to the Public,'' correspondence will be distributed to the subscribers after a slight delay, in order to provide the addressee with an opportunity to read the correspondence, before it is issued to the subscribers.

Individuals may subscribe to receive NRC-generated operating reactor correspondence by entering the following URL into their Web browser address bar: *http://www.nrc.gov/public-involve/listserver/plants-by-region.html,* or through the NRC's Web site, by selecting the ''Public Meetings & Involvement'' tab. For questions, please contact the email address listed on the Web site.

Dated at Rockville, Maryland, this 21st day of November, 2013.

For the Nuclear Regulatory Commission.

**Michele G. Evans,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013–28699 Filed 11–27–13; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–271; NRC–2013–0259]**

## License Amendment Application for Vermont Yankee Nuclear Power Station

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; withdrawal.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its application dated May 14, 2013, (ADAMS Accession No. ML13137A158), for a proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station, located in Windham County, VT. The proposed amendment would have revised the Technical Specifications (TSs) to reduce reactor pressure associated with the fuel cladding integrity safety limits (SLs).

**ADDRESSES:** Please refer to Docket ID NRC–2013–0259 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0259. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 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:** Douglas Pickett, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1364; email: *Dougas.Pickett@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The NRC has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its May 14, 2013, application (ADAMS Accession No. ML13137A158) for proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station, located in Windham County, VT.

The proposed amendment would have revised the Technical Specifications (TSs) to reduce reactor pressure associated with the fuel cladding integrity safety limits (SLs) from 800 pounds per square inch, absolute (psia) to 700 psia in SLs 1.1.A and 1.1.B. The proposed change is intended to address the potential to exceed the low pressure TS SL associated with a pressure regulator failure-maximum demand open transient as reported by General Electric Nuclear Energy in its Part 21 Communication, ''Potential to Exceed Low Pressure Technical Specification Safety Limit,'' SC05–03, dated March 29, 2005.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 6, 2013 (78 FR 47789). However, by letter dated September 26, 2013, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 14, 2013, and the licensee's letter dated September 26, 2013, which withdrew the application for license amendment (ADAMS Accession No. ML13274A240).

Dated at Rockville, Maryland, this 21st day of November, 2013.

For the Nuclear Regulatory Commission.

**Douglas V. Pickett,**

*Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013–28700 Filed 11–27–13; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2010–0278]**

### NUREG–1482, Revision 2, ''Guidelines for Inservice Testing at Nuclear Power Plants, Final Report''

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance; availability.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has issued a final report entitled: NUREG–1482, Revision 2, ''Guidelines for Inservice Testing at Nuclear Power Plants,'' and subtitled ''Inservice Testing of Pumps and Valves, and Inservice Examination and Testing of Dynamic Restraints (Snubbers) at Nuclear Power Plants.'' In the previous Revisions 0 and 1 of NUREG–1482, the NRC staff provides licensees guidelines and recommendations for developing and implementing programs for the inservice testing of pumps and valves at commercial nuclear power plants. In Revision 2 of NUREG–1482, the NRC staff also includes guidelines and recommendations for developing and implementing programs for the inservice examination and testing of dynamic restraints (snubbers).

**ADDRESSES:** Please refer to Docket ID NRC–2010–0278 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–2010–0278. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 NUREG–1482, Revision 2, ''Guidelines for Inservice Testing at Nuclear Power Plants, Final Report,'' and subtitled ''Inservice Testing of Pumps and Valves, and Inservice Examination and Testing of Dynamic Restraints (Snubbers) at Nuclear Power Plants,'' is available in ADAMS under Accession No. ML13295A020. The draft NUREG–1482, Revision 2 was published in the **Federal Register** for public comments on August 22, 2011 (76 FR 52355) and is available in ADAMS under Accession No. ML112231412. This document is a revision to the previously issued NUREG–1482, Revision 1 (ADAMS Accession No. ML050550290).
- *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:** Gurjendra S. Bedi, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1393, email: *Gurjendra.Bedi@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** NUREG–1482, Revision 2, ''Guidelines for Inservice Testing at Nuclear Power Plants, Final Report'' provides updated information on applicable regulations for testing of pumps and valves, and inservice examination and testing of snubbers. The information in NUREG–1482, ''Guidelines for Inservice Testing at Nuclear Plants,'' Revision 0, issued April 1995, and Revision 1, issued January 2005, has described these topics in the past.

This NUREG report replaces Revision 0 and Revision 1 of NUREG–1482, and is applicable, unless stated otherwise, to all editions and addenda of the American Society of Mechanical Engineers Code for Operation and Maintenance of Nuclear Power Plants (OM Code), which section 50.55a(b) of Title 10 of the *Code of Federal Regulations* (10 CFR) incorporates by reference (76 FR 36232–36279), dated July 21, 2011. This NUREG–1482, Revision 2 incorporates all the public comments received for the draft NUREG–1482, Revision 2. Based on public comments, all the structure and sections of NUREG–1482, Revision 1 are maintained and revised and updated. The main sections of the NUREG–1482, Revision 2 are for the IST of pumps and valves, similar to the NUREG–1482, Revision 1. An independent Appendix A, for inservice examination and testing of dynamic restraints (snubbers) is added for the first time in NUREG–1482, Revision 2. The NRC staff evaluation and resolution of public comments for draft NUREG–1482, Revision 2 are documented in ADAMS under Accession No. ML13161A382. Most of the draft NUREG–1482, Revision 2, pump and valve IST guidance provided in the Appendix A, are now in the main text of NUREG–1482, Revision 2. Appendix B to the draft NUREG–1482, Revision 2, guidance for inservice examination and testing for dynamic restraints (snubbers) is in the Appendix A of the NUREG–1482, Revision 2.

The guidelines and recommendations provided in this NUREG and its Appendix A do not supersede the regulatory requirements specified in 10 CFR 50.55a. Further, this NUREG does not authorize the use of alternatives to, or grant relief from, the ASME Code requirements for inservice testing of pumps and valves, or inservice examination and testing of dynamic restraints (snubbers), incorporated by reference in 10 CFR 50.55a. In addition, the NUREG discusses other inservice test program topics such as the NRC process for review of the OM Code, conditions on the use of the OM Code, and interpretations of the OM Code.

Dated at Rockville, Maryland, this 22nd day of October 2013.

For the Nuclear Regulatory Commission.

**Timothy R. Lupold,**

*Chief, Component Performance, NDE and Testing Branch, Division of Engineering, Office of Nuclear Reactor Regulation.*

[FR Doc. 2013–28701 Filed 11–27–13; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: 3206–0201, Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Web site

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 60-Day Notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0201, Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season Web site, Open Season Online. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary

for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until January 28, 2014. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to OPM, Retirement Services, Union Square Room 370, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler, or sent by email to *Alberta.Butler@opm.gov.*

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, OPM, 1900 E Street NW., Room 3316–AC, Washington, DC 20415, Attention: Cyrus S. Benson; or sent by email to *Cyrus.Benson@opm.gov;* or faxed to (202) 606–0910.

**SUPPLEMENTARY INFORMATION:** Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System, and the Open Season Web site, Open Season Online, are used by retirees and survivors. The IVR and Web site collect information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to OPM when the FEHB payment is greater than the monthly annuity amount, or requesting FEHB plan accreditation and Customer Satisfaction Survey information.

### Analysis

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Online.

*OMB Number:* 3206–0201.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 350,100.

*Estimated Time per Respondent:* 10 minutes.

*Total Burden Hours:* 58,350.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

[FR Doc. 2013–28657 Filed 11–27–13; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from October 1, 2013, to October 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

### Schedule A

No schedule A authorities to report during October 2013.

### Schedule B

No schedule B authorities to report during October 2013.

### Schedule C

The following Schedule C appointing authorities were approved during October 2013.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE. | Rural Business Service | Confidential Assistant | DA130225 | 10/18/2013 |
| | Office of the Under Secretary Farm and Foreign Agricultural Service. | Confidential Assistant | DA130226 | 10/23/2013 |
| | Office of the Secretary | Director of the Office of Faith Based and Neighborhood Outreach. | DA140001 | 10/30/2013 |
| DEPARTMENT OF COMMERCE. | Office of Public Affairs | Press Assistant | DC130098 | 10/21/2013 |
| | Office of Under Secretary | Director of External Affairs | DC130102 | 10/22/2013 |
| DEPARTMENT OF DEFENSE. | Office of Assistant Secretary of Defense (Legislative Affairs). | Special Assistant | DD130129 | 10/17/2013 |
| | Office of Assistant Secretary of Defense (Public Affairs). | Senior Public Affairs Advisor | DD140003 | 10/31/2013 |
| DEPARTMENT OF EDUCATION. | Office of the Under Secretary | Special Assistant | DB140002 | 10/28/2013 |
| | Office of Communications and Outreach. | Press Secretary | DB140003 | 10/29/2013 |
| | Office of the Under Secretary | Confidential Assistant | DB140004 | 10/29/2013 |
| DEPARTMENT OF ENERGY. | Office of Public Affairs | Director of Digital Strategy | DE130108 | 10/18/2013 |
| | | Deputy Director | DE130111 | 10/18/2013 |
| | | Assistant Press Secretary | DE130119 | 10/18/2013 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | | Chief Speechwriter | DE130107 | 10/22/2013 |
| | Office of the Secretary of Energy Advisory Board. | Special Advisor | DE130109 | 10/18/2013 |
| | Office of Fossil Energy | Senior Advisor | DE130112 | 10/18/2013 |
| | Office of the Deputy Secretary | Special Advisor | DE130115 | 10/22/2013 |
| | Office of the Secretary | Special Advisor | DE130116 | 10/18/2013 |
| | | Special Advisor for Finance | DE140003 | 10/28/2013 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Administrator | Deputy White House Liaison | EP140001 | 10/23/2013 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of the Secretary | Deputy White House Liaison for Political Personnel, Boards and Commissions. | DH140002 | 10/21/2013 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of the Secretary | Special Policy Advisor | DU130044 | 10/22/2013 |
| | Office of the Chief Human Capital Officer. | Advance Coordinator | DU130047 | 10/22/2013 |
| | Office of Congressional and Intergovernmental Relations. | Congressional Relations Officer (2) | DU130046 | 10/22/2013 |
| | | | DU130048 | 10/22/2013 |
| | | Associate Director of Intergovernmental Relations. | DU130049 | 10/22/2013 |
| | | General Deputy Assistant Secretary for Congressional Relations. | DU130050 | 10/22/2013 |
| | Office of Public Affairs | Deputy Press Secretary | DU130051 | 10/22/2013 |
| DEPARTMENT OF THE INTERIOR. | National Park Service | Special Assistant, National Park Service. | DI140002 | 10/24/2013 |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. | Office of the Administrator | Executive Officer | NN140002 | 10/29/2013 |
| NATIONAL CREDIT UNION ADMINISTRATION. | Office of the Board | Senior Policy Advisor | CU140001 | 10/18/2013 |
| SMALL BUSINESS ADMINISTRATION. | Office of Investment | Special Advisor | SB130025 | 10/18/2013 |
| DEPARTMENT OF STATE. | Bureau of Conflict and Stabilization Operations. | Director of Overseas Operations | DS140001 | 10/28/2013 |
| DEPARTMENT OF TRANSPORTATION. | Public Affairs | Speechwriter | DT140001 | 10/22/2013 |
| UNITED STATES INTERNATIONAL TRADE COMMISSION. | Office of Commissioner Kieff | Confidential Assistant | TC140001 | 10/24/2013 |
| | | Staff Assistant (Legal) (2) | TC140002 | 10/24/2013 |
| | | | TC140003 | 10/24/2013 |

The following Schedule C appointing authorities were revoked during October 2013.

| Agency | Organization | Position title | Authorization number | Vacate date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE. | Office of the Under Secretary for Food Safety. | Special Assistant | DA110121 | 10/6/2013 |
| DEPARTMENT OF EDUCATION. | Office of the Under Secretary | Confidential Assistant | DB130004 | 10/4/2013 |
| | | Special Assistant | DB130031 | 10/18/2013 |
| DEPARTMENT OF ENERGY. | Office of the Secretary | Special Assistant to the Secretary | DE110023 | 10/15/2013 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of the Chief of Staff | White House Liaison | DM110075 | 10/5/2013 |
| | Federal Emergency Management Agency. | Associate Director of Public Affairs/Press Secretary. | DM120089 | 10/5/2013 |
| DEPARTMENT OF THE INTERIOR. | Office of Congressional and Legislative Affairs. | Deputy Director, Office of Congressional and Legislative Affairs. | DI110086 | 10/4/2013 |
| OFFICE OF THE SECRETARY OF DEFENSE. | Washington Headquarters Services | Defense Fellow | DD110027 | 10/5/2013 |

| Agency | Organization | Position title | Authorization number | Vacate date |
|---|---|---|---|---|
| SMALL BUSINESS ADMINISTRATION. | Office of International Trade | Associate Administrator for International Trade. | SB110045 | 10/5/2013 |
| UNITED STATES INTERNATIONAL TRADE COMMISSION. | Office of the Chairman | Confidential Assistant | TC060010 | 10/17/2013 |

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

[FR Doc. 2013–28660 Filed 11–27–13; 8:45 am]

**BILLING CODE 6325–39–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from August 1, 2013, to August 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

### Schedule A

No schedule A authorities to report during August 2013.

### Schedule B

No schedule B authorities to report during August 2013.

### Schedule C

The following Schedule C appointing authorities were approved during August 2013.

| Agency name | Organization name | Position title | Authorization number | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE. | Office of the Secretary | Executive Assistant | DA130122 | 8/6/2013 |
| | Office of the Under Secretary for Marketing and Regulatory Programs. | Confidential Assistant | DA130126 | 8/8/2013 |
| | Office of the Under Secretary for Marketing and Regulatory Programs. | Senior Advisor | DA130176 | 8/16/2013 |
| | Office of the Secretary | Policy Assistant | DA130209 | 8/21/2013 |
| | Office of Communications | Deputy Director of Scheduling. | DA130210 | 8/21/2013 |
| DEPARTMENT OF COMMERCE. | Office of the Under Secretary | Senior Policy Advisor | DC130077 | 8/7/2013 |
| | Assistant Secretary and Director General for United States and Foreign Commercial Service. | Director of Outreach | DC130086 | 8/20/2013 |
| | Office of Policy and Strategic Planning | Special Assistant | DC130089 | 8/26/2013 |
| COMMISSION ON CIVIL RIGHTS. | Commissioners | Special Assistant | CC130004 | 8/15/2013 |
| DEPARTMENT OF DEFENSE. | Office of the Assistant Secretary of Defense (Special Operations/Low- Intensity Conflict and Interdependent Capabilities). | Special Assistant for Special Operations and Low-Intensity Conflict. | DD130114 | 8/20/2013 |
| | Office of the Assistant Secretary of Defense (International Security Affairs). | Special Assistant for International Security Affairs. | DD130118 | 8/20/2013 |
| | Office of the Assistant Secretary of Defense (International Security Affairs). | Special Assistant for Russia, Ukraine and Eurasia. | DD130119 | 8/29/2013 |
| DEPARTMENT OF THE ARMY. | Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology). | Special Assistant (Alternate). | DW130054 | 8/30/2013 |
| DEPARTMENT OF THE NAVY. | Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs). | Special Assistant | DN130007 | 8/9/2013 |
| DEPARTMENT OF EDUCATION. | Office of the Secretary | Special Assistant | DB130064 | 8/21/2013 |
| DEPARTMENT OF ENERGY. | Associate Administrator for External Affairs | Deputy Director for Communications. | DE130092 | 8/2/2013 |
| | Office of the Secretary of Energy Advisory Board | Deputy Director Secretarial Boards and Council. | DE130085 | 8/9/2013 |
| | Office of the Deputy Secretary | Special Assistant | DE130090 | 8/20/2013 |

| Agency name | Organization name | Position title | Authorization number | Effective date |
|---|---|---|---|---|
| | Office of Assistant Secretary for Policy and International Affairs. | Special Assistant | DE130106 | 8/26/2013 |
| | Office of Management | Scheduler | DE130105 | 8/28/2013 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Administrator | Special Assistant | EP130037 | 8/6/2013 |
| | | Special Assistant for Public Engagement. | EP130038 | 8/6/2013 |
| | The Deputy Administrator | Special Assistant for Policy and Operations. | EP130033 | 8/21/2013 |
| | | Policy Advisor | EP130034 | 8/28/2013 |
| EXPORT–IMPORT BANK. | Export Finance | Senior Vice President of Export Finance. | EB130004 | 8/26/2013 |
| FARM CREDIT ADMINISTRATION. | Office of the Board | Executive Assistant (2) | FL130005 | 8/5/2013 |
| | | | FL130004 | 8/6/2013 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Health Resources and Services Administration Office of the Administrator. | Special Assistant | DH130111 | 8/7/2013 |
| | Office of the Assistant Secretary for Public Affairs. | Director of Speechwriting. | DH130110 | 8/9/2013 |
| | Office of the Assistant Secretary for Health | Policy Advisor | DH130114 | 8/22/2013 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of the Assistant Secretary for Public Affairs. | Assistant Press Secretary. | DM130147 | 8/1/2013 |
| | Federal Emergency Management Agency | Director, Intergovernmental Affairs. | DM130157 | 8/20/2013 |
| | U.S. Customs and Border Protection | Senior Advisor | DM130160 | 8/23/2013 |
| DEPARTMENT OF THE INTERIOR. | Secretary's Immediate Office | White House Liaison | DI130054 | 8/30/2013 |
| DEPARTMENT OF JUSTICE. | Office of Public Affairs | Public Affairs Specialist | DJ130078 | 8/1/2013 |
| | Office of Justice Programs | Senior Advisor | DJ130084 | 8/20/2013 |
| | Antitrust Division | Counsel | DJ130086 | 8/20/2013 |
| DEPARTMENT OF LABOR. | Office of the Deputy Secretary | Chief Innovation Officer | DL130042 | 8/5/2013 |
| | Office of Public Affairs | Press Secretary | DL130053 | 8/19/2013 |
| OFFICE OF MANAGEMENT AND BUDGET. | Legislative Affairs | Deputy for Legislative Affairs. | BO130027 | 8/8/2013 |
| OVERSEAS PRIVATE INVESTMENT CORPORATION. | Overseas Private Investment Corporation | Deputy Chief of Staff | PQ130003 | 8/15/2013 |
| PENSION BENEFIT GUARANTY CORPORATION. | Office of the Executive Director | Chief of Staff | BG130001 | 8/8/2013 |
| | Office of Policy and External Affairs | Deputy Chief Policy Officer. | BG130002 | 8/20/2013 |
| DEPARTMENT OF STATE. | Office of the Secretary | Special Assistant | DS130107 | 8/6/2013 |
| UNITED STATES INTERNATIONAL TRADE COMMISSION. | Office of Commissioner Johanson | Staff Assistant (Legal) | TC130015 | 8/9/2013 |

The following Schedule C appointing authorities were revoked during August 2013.

| Agency name | Organization name | Position title | Authorization number | Vacate date |
|---|---|---|---|---|
| DEPARTMENT OF COMMERCE. | Office of the Assistant Secretary for Economic Development. | Special Advisor | DC120158 | 8/2/2013 |
| | Office of Executive Secretariat | Confidential Assistant | DC100121 | 8/9/2013 |
| | Office of the Assistant Secretary for Economic Development. | Senior Advisor | DC110135 | 816/2013 |
| | Office of Business Liaison | Special Assistant | DC120052 | 8/16/2013 |
| | Office of Legislative and Intergovernmental Affairs. | Confidential Assistant | DC120044 | 8/25/2013 |

| Agency name | Organization name | Position title | Authorization number | Vacate date |
|---|---|---|---|---|
| DEPARTMENT OF EDUCATION. | Office of the Deputy Secretary | Special Assistant | DB110019 | 8/4/2013 |
| DEPARTMENT OF ENERGY. | National Nuclear Security Administration | Special Assistant | DE120009 | 8/9/2013 |
| | Office of the Secretary | Special Assistant to the Chief of Staff. | DE130042 | 8/16/2013 |
| DEPARTMENT OF HOMELAND SECURITY. | U.S. Immigration and Customs Enforcement | Director of Congressional Relations. | DM090458 | 8/10/2013 |
| | Office of the Assistant Secretary for Public Affairs. | Press Assistant | DM110127 | 8/10/2013 |
| | Office of the Under Secretary for National Protection and Programs Directorate. | Program Coordinator | DM110192 | 8/23/2013 |
| DEPARTMENT OF JUSTICE. | Office of Public Affairs | Deputy Director | DJ120009 | 8/2/2013 |
| DEPARTMENT OF LABOR. | Office of the Deputy Secretary | Senior Advisor | DL100053 | 8/10/2013 |
| DEPARTMENT OF THE INTERIOR. | Secretary's Immediate Office | White House Liaison | DI120009 | 8/10/2013 |
| | | Special Assistant For Advance. | DI110049 | 8/16/2013 |
| DEPARTMENT OF THE TREASURY. | Assistant Secretary (Legislative Affairs) | Special Assistant | DY110094 | 8/10/2013 |
| DEPARTMENT OF TRANSPORTATION. | General Counsel | Special Assistant to the General Counsel. | DT100050 | 8/2/2013 |
| | Public Affairs | Associate Director for Speech-Writing. | DT120057 | 8/16/2013 |
| | | Press Secretary | DT120026 | 8/23/2013 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Deputy Associate Administrator for Office of Congressional Affairs. | EP110039 | 8/10/2013 |
| | Office of the Administrator | Deputy White House Liaison. | EP120008 | 8/24/2013 |
| EXPORT–IMPORT BANK. | Export-Import Bank | Deputy Chief of Staff | EB110012 | 8/23/2013 |
| FEDERAL ENERGY REGULATORY COMMISSION. | Office of the Chairman | Program Analyst | DR110007 | 8/10/2013 |
| FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION. | Office of the Commissioners | Attorney Advisor (General). | FR120001 | 8/7/2013 |

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

[FR Doc. 2013–28666 Filed 11–27–13; 8:45 am]

BILLING CODE 6325–39–P

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from September 1, 2013, to September 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

### Schedule A

*11. Department of Homeland Security (Sch. A, 213.3111)*

(d) General—

(1) Not to exceed 1,000 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after December 31, 2014.

**Schedule B**

No schedule B authorities to report during September 2013.

**Schedule C**

The following Schedule C appointing authorities were approved during September 2013.

| Agency name | Organization name | Position title | Authorization number | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE. | Rural Housing Service | State Director—Hawaii | DA130150 | 9/19/2013 |
| | Farm Service Agency | State Executive Director—West Virginia. | DA130190 | 9/19/2013 |
| | | State Executive Director—Pennsylvania. | DA130194 | 9/19/2013 |
| | | State Executive Director—New Jersey. | DA130202 | 9/19/2013 |
| | Office of the Under Secretary for Rural Development. | Special assistant | DA130218 | 9/5/2013 |
| | Office of the Assistant Secretary for Congressional Relations. | Confidential Assistant | DA130217 | 9/6/2013 |
| | Office of Communications | Deputy Director | DA130220 | 9/19/2013 |
| DEPARTMENT OF COMMERCE. | Office of the Director | Director, Office of Faith Based and Neighborhood Partnerships. | DC130090 | 9/4/2013 |
| | Office of the Chief of Staff | Director of Scheduling and Advance | DC130093 | 9/4/2013 |
| | Office of the Deputy Secretary | Special Assistant | DC130094 | 9/4/2013 |
| | Office of the General Counsel | Special Assistant | DC130091 | 9/9/2013 |
| COMMISSION ON CIVIL RIGHTS. | Commissioners | Special Assistant | CC130006 | 9/11/2013 |
| DEPARTMENT OF DEFENSE. | Office of the Assistant Secretary of Defense (International Security Affairs). | Special Assistant for Europe and NATO. | DD130120 | 9/6/2013 |
| | Office of the Secretary | Advance Officer | DD130123 | 9/25/2013 |
| DEPARTMENT OF EDUCATION. | Office of the General Counsel | Confidential Assistant | DB130065 | 9/4/2013 |
| | Office of the Under Secretary | Special Assistant | DB130059 | 9/11/2013 |
| | | Executive Director | DB130067 | 9/12/2013 |
| | | Deputy Director, White House Initiative on Historically Black College. | DB130068 | 9/12/2013 |
| | Office of Elementary and Secondary Education. | Deputy Assistant Secretary for Policy and Programs. | DB130069 | 9/13/2013 |
| | Office of the Deputy Secretary | Special Counsel | DB130071 | 9/20/2013 |
| | Office of the Under Secretary | Associate Assistant Deputy Secretary | DB130072 | 9/20/2013 |
| | Office of Vocational and Adult Education. | Confidential Assistant | DB130073 | 9/23/2013 |
| DEPARTMENT OF ENERGY. | Office of Nuclear Energy | Special Advisor | DE130101 | 9/4/2013 |
| | Office of Public Affairs | Speechwriter | DE130102 | 9/4/2013 |
| | Office of Management | Special Assistant | DE130097 | 9/11/2013 |
| | Loan Programs Office | Special Advisor | DE130117 | 9/24/2013 |
| | Office of Assistant Secretary for Congressional and Intergovernmental Affairs. | Director of External Affairs | DE130118 | 9/30/2013 |
| | Office of Assistant Secretary for Congressional and Intergovernmental Affairs. | Senior Advisor | DE130122 | 9/30/2013 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Deputy Associate Administrator for Office of Congressional Affairs. | EP130031 | 9/11/2013 |
| | Office of the Associate Administrator for External Affairs and Environmental Education. | Senior Speech Writer | EP130049 | 9/19/2013 |
| FEDERAL ENERGY REGULATORY COMMISSION. | Office of the Chairman | Program Analyst | DR130007 | 9/6/2013 |
| GENERAL SERVICES ADMINISTRATION. | Office of Communications and Marketing. | Director of Public Engagement | GS130025 | 9/27/2013 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of Intergovernmental and External Affairs. | Regional Director, Chicago, Illinois—Region V | DH130119 | 9/5/2013 |
| | Office of the Assistant Secretary for Planning and Evaluation. | Director of Public Health Policy (Office of Health Reform). | DH130122 | 9/5/2013 |
| | Administration for Community Living | Confidential Assistant | DH130121 | 9/5/2013 |
| | Office of the Assistant Secretary for Health. | Associate Director | DH130117 | 9/12/2013 |

| Agency name | Organization name | Position title | Authorization number | Effective date |
|---|---|---|---|---|
| | Office of the Assistant Secretary for Public Affairs. | Confidential Assistant | DH130120 | 9/5/2013 |
| | | Digital Communications Coordinator | DH130129 | 9/27/2013 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of the Assistant Secretary for Public Affairs. | Press Secretary | DM130168 | 9/13/2013 |
| | Office of the Under Secretary for National Protection and Programs Directorate. | Advisor | DM130166 | 9/16/2013 |
| | Office of the Chief of Staff | White House Liaison | DM130171 | 9/24/2013 |
| | Federal Emergency Management Agency. | Associate Director for Public Affairs/ Press Secretary. | DM130178 | 9/30/2013 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of the Secretary | Special Assistant (2) | DU130038 | 9/4/2013 |
| | | | DU130041 | 9/11/2013 |
| DEPARTMENT OF JUSTICE. | Office of Legislative Affairs | Chief of Staff and Attorney Advisor | DJ130089 | 9/4/2013 |
| | Office of Public Affairs | Speechwriter | DJ130093 | 9/5/2013 |
| DEPARTMENT OF LABOR. | Office of Public Affairs | Director of External Partnership | DL130056 | 9/5/2013 |
| | | Special Assistant | DL130059 | 9/19/2013 |
| | Office of the Secretary | Director of Public Engagement | DL130058 | 9/13/2013 |
| | | Special Assistant | DL130063 | 9/26/2013 |
| OFFICE OF NATIONAL DRUG CONTROL POLICY. | Intergovernmental Public Liaison | Public Engagement Specialist | QQ130004 | 9/16/2013 |
| | Office of the Director | Policy and Administrative Coordinator | QQ130005 | 9/18/2013 |
| OFFICE OF SCIENCE AND TECHNOLOGY POLICY. | Office of Science and Technology Policy. | Executive Assistant | TS130003 | 9/16/2013 |
| OVERSEAS PRIVATE INVESTMENT CORPORATION. | Office of the President | Deputy Chief of Staff | PQ130004 | 9/27/2013 |
| PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS. | President's Commission on White House Fellowships. | Public Relations Associate | WH130003 | 9/11/2013 |
| SECURITIES AND EXCHANGE COMMISSION. | Office of the Chairman | IT Specialist | SE130006 | 9/19/2013 |
| SMALL BUSINESS ADMINISTRATION. | Office of the Administrator | Deputy Scheduler | SB130023 | 9/5/2013 |
| SOCIAL SECURITY ADMINISTRATION. | Office of the Commissioner | Senior Advisor | SZ130016 | 9/20/2013 |
| DEPARTMENT OF STATE. | Office of the Secretary | Senior Advisor | DS130122 | 9/6/2013 |
| | | Deputy Chief of Staff for Policy | DS130116 | 9/11/2013 |
| | Bureau of Consular Affairs | Supervisory Public Affairs Specialist | DS130060 | 9/11/2013 |
| | Office of the Under Secretary for Management. | Staff Assistant | DS130124 | 9/18/2013 |
| | Office of the Under Secretary for Arms Control and International Security Affairs. | Special Assistant | DS130120 | 9/19/2013 |
| TRADE AND DEVELOPMENT AGENCY. | Office of the Director | Chief of Staff | TD130004 | 9/26/2013 |
| DEPARTMENT OF TRANSPORTATION. | Office of the Secretary | White House Liaison | DT130041 | 9/9/2013 |

The following Schedule C appointing authorities were revoked during September 2013.

| Agency name | Organization name | Position title | Authorization number | Vacate date |
|---|---|---|---|---|
| DEPARTMENT OF EDUCATION. | Office of the General Counsel | Confidential Assistant | DB120017 | 9/7/2013 |
| | Office of the Under Secretary | Special Assistant | DB120021 | 9/21/2013 |

| Agency name | Organization name | Position title | Authorization number | Vacate date |
|---|---|---|---|---|
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of the Assistant Secretary for Public Affairs. | Senior Speechwriter | DH130040 | 9/6/2013 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of the Assistant Secretary for Public Affairs. | Director of Strategic Communications | DM100106 | 9/7/2013 |
| | Office of the Assistant Secretary for Policy. | Special Assistant | DM110195 | 9/7/2013 |
| | Immediate Office of the Deputy Secretary. | Confidential Assistant | DM090285 | 9/21/2013 |
| | Office of the Assistant Secretary for Public Affairs. | Deputy Press Secretary | DM110234 | 9/21/2013 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Northwest/Alaska (Seattle) | Regional Administrator | DU100045 | 9/7/2013 |
| | Office of the General Counsel | Senior Counsel | DU110014 | 9/14/2013 |
| DEPARTMENT OF JUSTICE. | Office of Legislative Affairs | Attorney Advisor | DJ110034 | 9/7/2013 |
| | Civil Rights Division | Counsel | DJ100176 | 9/21/2013 |
| DEPARTMENT OF LABOR. | Office of Public Affairs | Special Assistant | DL090126 | 9/7/2013 |
| DEPARTMENT OF STATE. | Office of the Under Secretary for Arms Control and International Security Affairs. | Staff Assistant | DS120073 | 9/4/2013 |
| DEPARTMENT OF THE INTERIOR. | Secretary's Immediate Office | Special Assistant | DI120031 | 9/6/2013 |
| | Bureau of Safety and Environmental Enforcement. | Senior Advisor | DI110089 | 9/27/2013 |
| DEPARTMENT OF TRANSPORTATION. | Office of the Secretary | White House Liaison | DT090059 | 9/9/2013 |
| ENVIRONMENTAL PROTECTION AGENCY. | Office of the Associate Administrator for Congressional and Intergovernmental Relations. | Senior Advisor | EP130019 | 9/14/2013 |
| | Office of the Associate Administrator for External Affairs and Environmental Education. | Director, Office of Public Engagement. | EP110021 | 9/21/2013 |
| EXPORT–IMPORT BANK. | Export Finance | Senior Vice-President for Export Finance. | EB060001 | 9/30/2013 |
| OFFICE OF SCIENCE AND TECHNOLOGY POLICY. | Office of Science and Technology Policy. | Executive Assistant | TS100005 | 9/6/2013 |
| TRADE AND DEVELOPMENT AGENCY. | Office of the Director | Chief of Staff | TD120001 | 9/28/2013 |

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

[FR Doc. 2013–28664 Filed 11–27–13; 8:45 am]

**BILLING CODE 6325–39–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 301 and Forms ATS and ATS–R, SEC File No. 270–451, OMB Control No. 3235–0509.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation ATS provides a regulatory structure for alternative trading systems. Regulation ATS allows an alternative trading system to choose between registering as a broker-dealer and complying with Regulation ATS, or registering as a national securities exchange. Regulation ATS provides the regulatory framework for those alternative trading systems that choose to be regulated as broker-dealers. Rule 301 of Regulation ATS contains certain notice and reporting requirements, as well as additional obligations that apply only to alternative trading systems with significant volume. The Rule requires all alternative trading systems that wish to comply with Regulation ATS to file an initial operation report on Form ATS. The initial operation report requires information regarding operation of the system including the method of operation, access criteria and the types of securities traded. Alternative trading systems are also required to supply updates on Form ATS to the Commission, describing material changes to the system, and quarterly transaction reports on Form ATS–R. Alternative trading systems are also required to file cessation of operations reports on Form ATS.

An alternative trading system with significant volume is required to comply with requirements for fair access and systems capacity, integrity, and security. Under Rule 301, such alternative trading system is required to establish written standards for granting access to its system. In addition, such alternative trading system is required to make and keep records of all grants of access including, for all subscribers, the reasons for granting such access, and all denials or limitations of access and reasons, for each applicant, for denying or limiting access. Regulation ATS requires alternative trading systems to preserve any records made in the process of complying with the capacity, integrity, and security requirements. In addition, such alternative trading systems are required to notify Commission staff of material systems outages and significant systems changes.

The Commission uses the information provided pursuant to the Regulation ATS to monitor the growth and development of alternative trading systems, and to monitor whether the systems promote fair and orderly securities markets and operate in a manner that is consistent with the federal securities laws. In particular, the information collected and reported to the Commission by alternative trading systems enables the Commission to evaluate the operation of alternative trading systems with regard to national market system goals, and monitor the competitive effects of these systems to ascertain whether the regulatory framework remains appropriate to the operation of such systems. Without the information provided on Forms ATS and ATS–R, the Commission would not have readily available information on a regular basis in a format that would allow it to oversee the securities markets.

Respondents consist of alternative trading systems that choose to register as broker-dealers and comply with the requirements of Regulation ATS. The Commission estimates that there will be approximately 95 respondents.

An estimated 95 respondents will file an average total of 598 responses per year, which corresponds to an estimated aggregated annual response burden of 2,872.50 hours (comprised of 2,156 hours professional labor and 716.5 hours para-professional labor). At an average cost per burden hour of approximately $379 for professional labor and $63 for para-professional labor, the resultant total related cost of compliance for these respondents is $862,263.50 per year ((2,156 professional burden hours multiplied by $379 = $817,124) plus (716.5 para-professional burden hours multiplied by $63 = $45,139.50).

An estimated 7 respondents will commence operations as an ATS each year, necessitating the filing of an initial operation report on Form ATS. The Commission estimates that the average compliance burden for each respondent would be 20 hours, comprising 13 hours of in-house professional work and 7 hours of clerical work. Thus, the total compliance burden per year is 140 hours (7 responses × 20 hours = 140 hours). The total cost of compliance for the annual burden is $37,576 ($379 × 13 hours per response + $63 × 7 hours per response = $5,368 per response; $5,368 × 7 responses = $37,576).

An estimated 95 respondents will file an estimated two periodic amendments to their initial operation report on Form ATS each year, an estimated total of 190 amendments. The Commission estimates that the average compliance burden for each amendment would be 6 hours, comprising 4.5 hours of in-house professional work and 1.5 hours of clerical work. Thus, the total compliance burden per year is 1,140 hours (190 responses × 6 hours = 1,140 hours). The total cost of compliance for the annual burden is $342,000 ($379 × 4.5 hours per response + $63 × 1.5 hours per response = $1,800 per response; $1,800 × 190 responses = $342,000).

An estimated 95 respondents will file four quarterly reports on Form ATS–R each year for an estimated total of 380 responses. The Commission estimates that that the average compliance burden for each filing would be 4 hours, comprising 3 hours of in-house professional work and 1 hour of clerical work. Thus, the total compliance burden per year is 1,520 hours (380 responses × 4 hours = 1,520 hours). The total cost of compliance for the annual burden is $456,000 ($379 × 3 hours per response + $63 × 1 hours per response = $1,200 per response; $1,200 × 380 responses = $456,000).

An estimated 5 respondents will be required to file a cessation of operations report on Form ATS each year. The Commission estimates that the average compliance burden for each response would be 2 hours, comprising 1.5 hours of in-house professional work and 0.5 hours of clerical work. Thus, the total compliance burden per year is 10 hours (5 responses × 2 hours = 10 hours). The total cost of compliance for the annual burden is $3,000 ($379 × 1.5 hours per response + $63 × 0.5 hours per response = $600 per response; $600 × 5 responses = $3,000).

An estimated 2 respondents will meet certain volume thresholds requiring them to establish written standards for granting access to their systems. The Commission estimates that the average compliance burden for each response would be 10 hours of in-house professional work at $379 per hour. Thus, the total compliance burden per year is 20 hours (2 responses × 10 hours = 20 hours). The total cost of compliance for the annual burden is $7,580 ($379 × 10 hours per response × 2 responses = $7,580).

An estimated 2 respondents will meet certain volume thresholds requiring them to make and keep records of (1) all grants of access including, for all subscribers, the reasons for granting such access; and (2) all denials or limitations of access and reasons, for each applicant, for denying or limiting access. The Commission estimates that the average compliance burden for each response would be 10 hours of in-house professional work at $379 per hour. Thus, the total compliance burden per year is 20 hours (2 respondents × 10 hours = 20 hours). The total cost of compliance for the annual burden is $7,580 ($379 × 10 hours per response × 2 respondents = $7,580).

An estimated 2 respondents will meet certain volume thresholds requiring them to keep records relating to any steps taken to comply with systems capacity, integrity, and security requirements under Rule 301. The Commission estimates that the average compliance burden for each response would be 10 hours of in-house professional work at $379 per hour. Thus, the total compliance burden per year is 20 hours (2 respondents × 10 hours = 20 hours). The total cost of compliance for the annual burden is $7,580 ($379 × 10 hours per response × 2 respondents = $7,580).

An estimated 2 respondents will meet certain volume thresholds requiring them to provide a notice to the Commission to report any system outages, and these notice obligations will be triggered an estimated 5 times per year for each respondent. The Commission estimates that the average compliance burden for each response would be 0.25 hours of in-house professional work at $379 per hour. Thus, the total compliance burden per year is 2.5 hours (2 respondents × 5 responses each × 0.25 hours = 2.5 hours). The total cost of compliance for the annual burden is 947.50 ($379 × 0.25 hours per response × 10 responses = $947.50).

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

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.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 22, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28575 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: US Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Form BD–N/Rule 15b11–1, SEC File No. 270–498, OMB Control No. 3235–0556.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15b11–1 (17 CFR 240.15b11–1) requires that futures commission merchants and introducing brokers registered with the Commidity Futures Trading Commission that conduct a business in security futures products must notice-register as broker-dealers pursuant to Section 15(b)(11)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Form BD–N Form BD–N (17 CFR 249.501b) is the Form by which these entities must notice register with the Commission.

The total annual burden imposed by Rule 15b11–1 and Form BD–N is approximately 16 hours, based on approximately 60 responses (2 initial filings + 58 amendments). Each initial filing requires approximately 30 minutes to complete and each amendment requires approximately 15 minutes to complete. There is no annual cost burden.

The Commission will use the information collected pursuant to Rule 15b11–1 to understand the market for securities futures product and fulfill its regulatory obligations.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Comments should be directed to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 60 days of this notice.

Dated: November 22, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28576 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70937; File No. SR–NSCC–2013–11]**

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Add a New Service to the National Securities Clearing Corporation's Obligation Warehouse (''OW'') Which Would Pair Off and Close Certain Open Obligations, Reducing the Number of Open Obligations in OW

November 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2013, National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. 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

NSCC is proposing to modify its Rules & Procedures (''Rules'') to add a new service to NSCC's Obligation Warehouse (''OW'') which would pair off and close certain open obligations, reducing the number of open obligations in OW, as more fully described below.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1). Defined terms that are not defined in this notice are defined in Exhibit 5 of the proposed rule change filing, available at *http://www.sec.gov/rules/sro/nscc.shtml under File No. SR–NSCC–2013–02,* Additional Materials.

[2] 17 CFR 240.19b–4.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is for NSCC to modify its Rules to add a new service to NSCC's Obligation Warehouse (''OW'') which would pair off and close certain open obligations, reducing the number of open obligations in OW. NSCC's Obligation Warehouse, or ''OW'', implemented in 2011, is a non-guaranteed, automated service that tracks, stores, and maintains unsettled ex-clearing and failed obligations, as well as obligations exited from NSCC's Continuous Net Settlement (''CNS'') system, non-CNS Automated Customer Account Transfer Service (''ACATS'') Receive and Deliver Instructions, Balance Orders, and Special Trades, as defined in NSCC's Rules (collectively ''OW Obligations''). The service provides transparency, serves as a central storage of open (i.e. failed or unsettled) broker-to-broker obligations, and allows users to manage and resolve exceptions in an efficient and timely manner.

Simultaneously, OW provides on-going maintenance and servicing of matched obligations that have not been marked by a Member as subject to upcoming delivery, closure, or cancellation. Examples of this on-going maintenance and servicing include adjustments for certain corporate actions, daily review for CNS eligibility, and regular processing of the Reconfirmation and Pricing Service (''RECAPS'') in the OW on days announced by Important Notices. During the daily review for CNS eligibility, OW Obligations that are eligible for CNS are exited from the OW and forwarded to CNS. On days when RECAPS is run in the OW, OW Obligations that are eligible for RECAPS [3] are re-netted and, if appropriate, are marked to the current market price,[4] and are provided with an updated settlement date of the next business day. NSCC is proposing to add a new service to OW, the Pair Off function, which would pair off and close certain open obligations, reducing the number of open obligations in OW. The Pair Off function would run once a day, immediately following the completion of the review for CNS eligibility.[5]

OW stores and maintains OW Obligations until they are settled, closed, or cancelled. Today, in order to reduce the number of obligations that remain on their books and records, Members may take actions away from NSCC to close out these open obligations. Those Members would then close the obligations in OW. The proposed Pair Off function would facilitate the close out of any OW Obligations that Members designate as eligible for the service. By facilitating the close out of these obligations in an automated manner within the OW, the Pair Off function would add transparency to the life cycle of these obligations that may otherwise be closed out away from NSCC. With respect to obligations that are removed from the OW as a result of a pair off, the function would also help Members to remove these obligations from their books and records, and would reduce those Members' administrative costs associated with maintaining these obligations in OW.

Under the proposed rule change, NSCC Members would have the opportunity to designate certain OW Obligations that are in ''Open'' status in the OW to which they are a party to be eligible to be paired off with other OW Obligations in the same CUSIP and ultimately closed.[6] NSCC may, in its discretion, exclude certain obligations from the Pair Off function, and will announce by Important Notice which obligations are excluded. Initially, the following obligations may be excluded: (1) OW Obligations in which the underlying security is a mutual fund, a when-issued security,[7] or is part of a syndicate; (2) OW Obligations that are identified in OW as an ACATS Receive and Deliver Instruction; (3) obligations that, as of the time the Pair Off function runs, are identified in the OW as being subject to a corporate action; and (4) an obligation that is marked in the OW as being in ''Open'' status but has already been sent to The Depository Trust Company's Inventory Management System (IMS) as a pending delivery.

The Pair Off function would use a matching methodology that would pair off eligible OW Obligations based on the quantity of underlying securities, the final money amount, and the settlement dates of the underlying obligations. The Pair Off function would only match OW Obligations that have been designated as eligible for pair off by both Members that are party thereto, and that are in the same CUSIP and have the same counterparties, where the counterparties have offsetting long and short obligations. The methodology would pair off eligible OW Obligations in order by first pairing off those obligations that have the most criteria in common. For example, the methodology would first pair off eligible OW Obligations where the quantity of underlying securities, the settlement dates of the obligations, and the final money amounts are identical. The methodology would continue to review eligible OW Obligations subject to certain rules, beginning with eligible OW Obligations with the oldest settlement date, and eligible OW Obligations with the smallest number of underlying securities.

Under the proposal, eligible OW Obligations would be paired off where the quantity of underlying securities, the final money amount, or the settlement dates of the underlying obligations may not be identical, and, in certain cases, one OW Obligation would be paired off against multiple OW Obligations. However, a pair off would never occur if it would result in (1) a negative quantity of underlying securities in either of the original obligations, (2) it [*sic*] a negative final money amount, or (3) at least one of the obligations subject to the pair off to remain open, with a reduced quantity of underlying securities and have a final money amount of zero or less than zero. Additionally, OW Obligations in municipal bonds would only be eligible for pair off where the quantity of the underlying securities in the obligations subject to the pair off is identical and no underlying securities remain.

Where the pair off criteria are met, the OW Obligations would either be closed or, where the quantities of underlying securities are not exactly matched between obligations being paired off, the pair off would result in one or more of the obligations being reduced by the quantity of securities that were paired off. Those obligations would remain in ''Open'' status in OW and would be adjusted to reflect the reduced number

[3] Obligations that are matched and have a settlement date of at least two days prior to the date on which the RECAPS process commences will be considered for inclusion in the RECAPS process, and therefore, fail items not already in the OW and eligible for RECAPS processing must be submitted by the Member prior to RECAPS processing.

[4] In the event that the current market price for a security is not available, the obligation's price details will be unchanged from when it was previously matched.

[5] NSCC will announce by Important Notice days on which Pair Off function will not run, which may include days on which the RECAPS process is run in the OW.

[6] Members may either participate in the Pair Off function on an account level, designating all OW Obligations in an ''Open'' status in the OW to which they are a party as eligible for the Pair Off function, and then opt out of the function with respect to certain OW Obligations; or they may designate only certain OW Obligations as eligible for pair off.

[7] A transaction in a ''when issued'' security is made conditionally because the underlying security has been authorized but not yet issued, and will only settle after the security has been issued.

of underlying securities. Where the underlying final money amounts are not exactly matched between obligations being paired off, the pair off would result in a cash adjustment, which would be reflected in the Members' money settlement with NSCC on the following business day.

Implementation Timeframe

Subject to approval of this filing, NSCC proposes to implement the Pair Off function during the first quarter of 2014. Pending Commission approval, Members will be advised of the implementation date through issuance of an NSCC Important Notice.

Proposed Rule Changes

NSCC is proposing to amend Rule 51 (Obligation Warehouse) and add a new Section E to the existing Procedure IIA (Obligation Warehouse) describing the Pair Off function.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC, in particular Section 17A(b)(3)(F) of the Act,[8] which requires that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. By providing for greater efficiency and transparency with respect to obligations processed through the OW, the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

## 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 such a 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 No. SR–NSCC–2013–11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSCC–2013–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://dtcc.com/downloads/legal/rule_filings/2013/nscc/SR-NSCC-2013-02.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 No. SR–NSCC–2013–11 and should be submitted on or before December 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28723 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70930; File No. SR–CBOE–2013–093]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Amend CBOE Rule 6.42

November 22, 2013.

## I. Introduction

On September 27, 2013, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 6.42, ''Minimum Increments for Bids and Offers,'' to establish a minimum quoting increment for complex orders. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposal

Currently, CBOE Rule 6.42(4) provides that bids and offers on complex orders may be expressed in any increment regardless of the minimum increments otherwise appropriate to the individual legs of the order.[4] CBOE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70618 (October 7, 2013), 78 FR 62887 (''Notice'').

[4] For the purposes of CBOE Rule 6.42, a complex order is a spread, straddle, combination, or ratio order as defined in CBOE Rule 6.53, a stock-option order as defined in CBOE Rule 1.1(ii), a security future-option order as defined in Rule 1.1(zz), or any other complex order as defined in CBOE Rule 6.53C. *See* CBOE Rule 6.42, Interpretation and Policy .01.

states that this language allows bids and offers for complex orders to be expressed in any increment whatsoever.[5] To establish a minimum quoting increment for complex orders, CBOE proposes to revise CBOE Rule 6.42(4) to state that bids and offers for complex orders may be expressed in any net price increment that may not be less than $0.01, which CBOE may determine on a class-by-class basis and announce to Trading Permit Holders (''TPHs'') via Regulatory Circular.[6] CBOE would notify TPHs of the minimum quoting increments for complex orders via Regulatory Circular.[7] CBOE would not change the minimum quoting increments for complex orders on an intra-day basis.[8]

According to CBOE, many web-based services that public customers use to enter options orders do not permit the entry of orders in sub-penny increments, a limitation that other market participants may not face.[9] CBOE believes that the proposal will establish a minimum complex order quoting increment that all market participants will be able to monitor and in which all market participants will be able to enter orders.[10] In addition, because CBOE's electronic complex order execution systems, the Complex Order Book (''COB'') and Complex Order Auction (''COA''), are not configured to permit quoting in sub-penny increments, the $0.01 minimum increment would place electronic and manually entered complex orders on an even footing.[11] CBOE also believes that establishing a minimum quoting increment of $0.01 will assure that price improvement occurs at a meaningful increment, and will prevent market participants from jumping ahead of an existing quote by providing a *de minimus* amount of price improvement.[12]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] 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, 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. As discussed above, CBOE Rule 6.42(4) currently allows bids and offers for complex orders to be expressed in any increment, which potentially could permit bids and offers for complex orders to be expressed in increments smaller than $0.01. In contrast, complex orders entered in the COB and RFR Responses to a COA auction may not be entered in increments smaller than $0.01.[15] Thus, under CBOE's current rules, complex orders that are entered manually potentially could be entered in increments smaller than $0.01, while complex order trading interest entered electronically in the COB and the COA may not be entered in increments smaller than $0.01. By establishing a $0.01 minimum quoting increment for complex orders, the proposal is designed to protect investors by establishing a consistent minimum quoting increment for complex orders that are entered manually and complex orders that are entered electronically through the COB and COA.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–2013–093) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28573 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[5] *See* Notice 78 FR at 62887.

[6] CBOE states that the rule would allow the Exchange to establish uniform complex order quoting increments within a class, and to set and vary the minimum complex order quoting increments for different classes in response to different market conditions in those classes and to encourage more trading in those classes. CBOE notes that its rules currently allow it to establish minimum quoting increments for complex orders in options on the S&P 500 Index (''SPX''), the p.m.-settled S&P 500 Index (''SPXPM''), and on the S&P 100 Index (''OEX'' and ''XEO''). *See* Notice 78 FR at 62888 and CBOE Rule 6.42(4).

[7] *See* Notice 78 FR at 62888.

[8] *See id.* at note 4.

[9] *See* Notice 78 FR at 62887.

[10] *See id.*

[11] *See* Notice 78 FR at 62887–62888. *See also* CBOE Rules 6.53C(c)(ii) and 6.53C(d)(iii)(1) (providing for quoting increments of no less than $0.01 in the COB and Requests for Responses (''RFRs'') in increments of no less than $0.01 in the COA). CBOE notes that the $0.01 minimum increment would prevent sophisticated market participants from manually entering complex order quotations in sub-penny amounts. *See* Notice 78 FR at 62888, note 5.

[12] *See* Notice 78 FR at 62888.

[13] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* CBOE Rules 6.53C(c)(ii) and (d)(iii)(1).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70927; File No. 4–669]**

## Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing of Proposed Minor Rule Violation Plan

November 22, 2013.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19d–1(c)(2) thereunder,[2] notice is hereby given that on November 14, 2013, Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed minor rule violation plan (''MRVP'') with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act[3] requiring that a self-regulatory organization (''SRO'') promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[4] In accordance with Rule 19d–1(c)(2) under the Act,[5] the Exchange proposes to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

The Exchange proposes to include in its MRVP the procedures and violations currently included in Exchange Rule 1614 (''Imposition of Fines for Minor Rule Violations''), which has been

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] 17 CFR 240.19d–1(c)(1).

[4] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[5] 17 CFR 240.19d–1(c)(2).

incorporated by reference from the International Securities Exchange's rule book.[6] According to the Exchange's MRVP, under Rule 1614, the Exchange may impose a fine (not to exceed $2,500) on any Member, or person associated with or employed by a Member, for any rule listed in Rule 1614(d).[7] The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under the Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.

The Exchange proposes that, as set forth in Exchange Rule 1614(d), violations of the following rules would be appropriate for disposition under the MRVP: Rule 412 (Position Limits); Rule 415 (Reports Related to Position Limits); Rule 1403 (Focus Reports); Rule 1404 (Requests for Trade Data); Conduct and Decorum Policies; Rule 717 (Order Entry); Rule 803 (Quotation Parameters); Rule 805 (Execution of Orders in Appointed Options); Rule 419 (Mandatory Systems Testing); and Rule 1100 (Exercise of Options Contracts).

Upon the Commission's declaration of effectiveness of the MRVP, the Exchange will provide to the Commission a quarterly report for any actions taken on minor rule violations under the MRVP. The quarterly report will include: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation occurred, and the date of the disposition.

The Exchange also proposes that, going forward, to the extent that there are any changes to the rules applicable to the Exchange's MRVP, the Exchange requests that the Commission deem such changes to be modifications to the Exchange's MRVP.

## I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Exchange's proposed MRVP, including whether the proposed MRVP 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. 4–669 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 4–669. 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 MRVP that are filed with the Commission, and all written communications relating to the proposed MRVP 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 proposed MRVP 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 No. 4–669 and should be submitted on or before December 20, 2013.

## II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder,[8] after December 20, 2013, the Commission may, by order, declare the Exchange's proposed MRVP effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed MRVP, File No. 4–669, and to the period of its effectiveness, which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28570 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[6] As noted above, the Exchange received its grant of registration on July 26, 2013, which included approving the rules that govern the Exchange.

[7] While Rule 1614 allows the Exchange to administer fines up to $5,000, the Exchange is only seeking relief from the reporting requirements of paragraph (c)(1) of Rule 19d–1 for fines administered under Rule 1614(d) that do not exceed $2,500.

[8] 15 U.S.C. 78s(d)(1); 17 CFR 240.19d–1(c)(2).

[9] 17 CFR 200.30–3(a)(44).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70926; File No. SR–NASDAQ–2013–141]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NOM Market Maker Penny Pilot Options Rebate To Add Liquidity

November 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2013, 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 NASDAQ. 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

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend certain NOM Market Maker [3] Rebates to Add Liquidity in Penny Pilot Options.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. 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 proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange proposes to amend the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity. The Exchange believes the amendments will attract greater liquidity to the Exchange.

Today, the Exchange offers a four-tiered Rebate to Add Liquidity in Penny Pilot Options to NOM Market Makers as follows:

| | Monthly volume | Rebate to add liquidity |
|---|---|---|
| Tier 1 | Participant adds NOM Market Maker liquidity in Penny Pilot Options of up to 39,999 contracts per day in a month. | $0.25 |
| Tier 2 | Participant adds NOM Market Maker liquidity in Penny Pilot Options of 40,000 to 69,999 contracts per day in a month. | $0.30 |
| Tier 3 | Participant adds NOM Market Maker liquidity in Penny Pilot Options of 70,000 to 99,999 contracts per day in a month. | $0.32 |
| Tier 4 | Participant adds NOM Market Maker liquidity in Penny Pilot Options of 100,000 or more contracts per day in a month. | $0.32 or $0.38 in the following symbols BAC, GLD, IWM, QQQ and VXX or $0.40 in SPY |

The Exchange proposes to lower the volume requirements on all NOM Market Maker Rebate to Add Liquidity Penny Pilot Option tiers. Tier 1 currently pays a $0.25 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options of up to 39,999 contracts per day in a month. With respect to Tier 1, the Exchange will continue to pay a $0.25 per contract rebate to a Participant provided the Participant adds NOM Market Maker liquidity in Penny Pilot Options of up to 29,999 contracts per day in a month. Tier 2 currently pays a $0.30 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options of 40,000 to 69,999 contracts per day in a month. With respect to Tier 2, the Exchange will continue to pay a $0.30 per contract rebate to a Participant provided the Participant adds NOM Market Maker liquidity in Penny Pilot Options of 30,000 to 59,999 contracts per day in a month. Tier 3 currently pays a $0.32 per contract rebate to Participants that add NOM Market Maker liquidity in Penny Pilot Options of 70,000 to 99,999 contracts per day in a month. With respect to Tier 3, the Exchange will continue to pay a $0.32 per contract rebate to a Participant provided the Participant adds NOM Market Maker liquidity in Penny Pilot Options of 60,000 to 79,999 contracts per day in a month. Tier 4 currently pays a $0.32 or $0.38 per contract rebate in BAC, GLD, IWN, QQQ and VXX and a $0.40 per contract in SPY to Participants that add NOM Market Maker liquidity in Penny Pilot Options of 100,000 or more contracts per day in a month. With respect to Tier 4, the Exchange will continue to pay a a $0.32 or $0.38 per contract rebate in BAC, GLD, IWN, QQQ and VXX and a $0.40 per contract in SPY to a Participant provided the Participant adds NOM Market Maker liquidity in Penny Pilot Options of 80,000 or more contracts per day in a month.

The Exchange believes that these amendments to the NOM Market Maker Rebate to Add Liquidity tiers will continue to incentivize NOM Market Makers to post liquidity on the Exchange.

[3] The term ''NOM Market Maker'' is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[4] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2013. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); and 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR–NASDAQ–2013–082). *See also* NOM Rules, Chapter VI, Section 5.

2. Statutory Basis

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act [6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to lower the volume requirements on the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity tiers is reasonable because it should incentivize NOM Market Makers to post liquidity on NOM. Also, the lower volume tiers should allow a greater number of Participants to qualify for NOM Market Maker rebates. The Exchange is lowering the volume on each of the rebate tiers so that Participants who currently qualify for certain NOM Market Maker rebate tiers may be able to qualify for higher rebates. In addition, Participants who did not qualify for a NOM Market Maker rebate may now be able to qualify for the Tier 1 rebate. The Exchange believes that offering NOM Market Makers the opportunity to earn higher rebates, by qualifying for higher rebate tiers, is reasonable because by incentivizing NOM Market Makers to post liquidity on NOM will also benefit participants through increased order interaction.

The Exchange's proposal to lower the volume requirements on the NOM Market Maker Penny Pilot Options Rebates to Add Liquidity tiers is equitable and not unfairly discriminatory because this amendment will be applied to all Participants in a uniform matter. In addition, Participants should continue to qualify for the rebates that they currently receive and may earn increased rebates by qualifying for a higher volume tier. For example, a Participant that currently qualifies for a Tier 2 rebate by transacting 60,000 contracts per day in a month may now qualify for a Tier 3 rebate and earn the $0.32 per contract rebate provided the Participant continues to transact that volume. NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. The Exchange believes that NOM Market Makers should be offered the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers because NOM Market Makers add value through continuous quoting [7] and the commitment of capital. The Exchange believes that encouraging NOM Market Makers to be more aggressive when posting liquidity benefits all market participants through increased liquidity. The Exchange also believes that lowering the volume on the various NOM Market Maker rebate tiers is equitable and not unfairly discriminatory because it does not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will earn the same or lower rebates as compared to Customers and Professionals.[8]

The Exchange believes that continuing to offer NOM Market Makers the opportunity to receive higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the NOM Market Maker rebate tiers and every NOM Market Maker is entitled to a rebate solely by adding one contract of NOM Market Maker liquidity on NOM. Also, as mentioned, the NOM Market Maker would receive the same rebate in Tier 1 as compared Customers and Professionals and a higher rebate in all other tiers as compared to a Firm, Non-NOM Market Maker or Broker-Dealer because of the obligations [9] borne by NOM Market Makers as compared to other market participants. Encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction. The Exchange believes that Customers are entitled to higher rebates because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. By offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow. A Participant may not be able to gauge the exact rebate tier it would qualify for until the end of the month because Professional volume would be commingled with Customer volume in calculating tier volume.[10] A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price.[11] Further, the Exchange initially established Professional pricing in order to ''. . . bring additional revenue to the Exchange.'' [12] The Exchange noted in the Professional Filing that it believes ''. . . that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.'' [13] The Exchange

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4), (5).

[7] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[8] The Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options is the same rebate as the Tier 1 Customer and Professional rebate in Penny Pilot Options. The Exchange pays the highest Tier 1 Rebates to Add Liquidity in Penny Pilot Options of $0.25 per contract to Customers, Professionals and NOM Market Makers for transacting one qualifying contract as compared to other market participants. Firms, Non-NOM Market Makers and Broker-Dealers receive a $0.10 per contract Penny Pilot Option Rebate to Add Liquidity. In addition, Participant that adds Firm, Non-NOM Market Maker or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 15,000 contracts per day or more in a given month will receive a Rebate to Add Liquidity in Penny Pilot Options of $0.20 per contract.

[9] *See* note 7.

[10] Customer and Professional volume is aggregated for purposes of determining which rebate tier a Participant qualifies for with respect to the Professional Rebate to Add Liquidity in Penny Pilot Options.

[11] A Professional would be unable to determine the exact rebate that would be paid on a transaction by transaction basis with certainty until the end of a given month when all Customer and Professional volume is aggregated for purposes of determining which tier the Participant qualified for in a given month.

[12] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) (''Professional Filing''). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[13] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066).

also noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a customer and market maker, accomplishes this objective.[14] The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. Also, a Professional is assessed the same fees as other market participants, except Customers.[15] For these reasons, the Exchange believes that continuing to offer Professionals the same rebates as Customers is equitable and not unfairly discriminatory.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that incentivizing NOM Market Makers to post liquidity on NOM benefits market participants through increased order interaction. Also, NOM Market Makers have obligations [16] to the market which are not borne by other market participants and therefore the Exchange believes that NOM Market Makers are entitled to such higher rebates. Lowering the volume requirements on the various NOM Market Maker rebate tiers in Penny Pilot Options should further encourage NOM Market Makers to post liquidity on NOM.

The proposed amendments does [sic] not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will earn the same or lower rebates as compared to Customers and Professionals. The Exchange believes the differing outcomes, rebates and fees created by the Exchange's proposed pricing incentives contributes to the overall health of the market place for the benefit of all Participants that willing [sic] choose to transact options on NOM. For the reasons specified herein, the Exchange does not believe this proposal creates an undue burden on competition.

The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–141 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–141. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2013–141 and should be submitted on or before December 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28571 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[14] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066). The Exchange noted in this filing that it believes the role of the retail customer in the marketplace is distinct from that of the professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

[15] The Fee for Removing Liquidity in Penny Pilot Options is $0.48 per contract for all market participants, except Customers who are assessed $0.45 per contract.

[16] *See* note 7.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70928; File No. SR–CME–2013–31]**

## Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Addition of a New Rate Option for Interest Rate Swaps Denominated in Mexican Peso

November 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 2013, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. 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

CME is filing a proposed rule change that is limited to its business as a derivatives clearing organization. More specifically, the proposed rule change would update the CME Rulebook to reflect the addition of MXN–TIIE–BANXICO Rate Option for interest rate swaps denominated in Mexican Peso (''MXN'').

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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*

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission and currently offers clearing services for many different futures and swaps products. With this filing, CME proposes to make amendments to its rules to reflect the addition of the MXN–TIIE–BANXICO Rate Option for interest rate swaps denominated in MXN. Although these changes will be effective on filing, CME plans to operationalize the proposed changes on November 18, 2013.

Section 90102.E of the Rulebook is being updated to reflect the addition of MXN–TIIE–BANXICO Rate Option for interest rate swaps denominated in MXN. CME will also be making certain conforming changes to its IRS Manual of Operations for CME Cleared Interest Rate Swaps to address the addition of MXN as an eligible currency and MXN–TIIE–BANXICO as an eligible floating rate for fixed-floating interest rate swaps.

The changes that are described in this filing are limited to CME's business as a derivatives clearing organization clearing products under the exclusive jurisdiction of the Commodity Futures Trading Commission (''CFTC'') and do not materially impact CME's security-based swap clearing business in any way. CME notes that it has already submitted the proposed rule change that is the subject of this filing to its primary regulator, the CFTC, in CME Submissions 13–520 and 13–522 (and will also be making an additional filing with CFTC in the near future, CME Submission No. 13–523, to provide additional information required for the new product to the CFTC separately under CFTC Regulation 39.5).

CME believes the proposed rule change is consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[5] The proposed rule change reflects the addition of new derivatives products, namely, the MXN–TIIE–BANXICO Rate Option for interest rate swaps denominated in MXN, and as such is designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[6]

Furthermore, the proposed changes are limited in their effect to swaps products offered under CME's authority to act as a derivatives clearing organization. These products are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a derivatives clearing organization clearing swaps that are not security-based swaps; CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to swaps products offered under CME's authority to act as a derivatives clearing organization, the proposed changes are properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, and swaps that are not security-based swaps or mixed swaps; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act[7] and are properly filed under Section 19(b)(3)(A)[8] and Rule 19b–4(f)(4)(ii)[9] thereunder.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The rule change merely adds new products for clearing.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(ii).

received any unsolicited written comments from 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) [10] of the Act and Rule 19b–4(f)(4)(ii) [11] thereunder. 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.[12]

**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 No. SR–CME–2013–31 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2013–31. 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 or 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

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–CME–2013–31 and should be submitted on or before December 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28574 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(4)(ii).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70924; File No. SR–FINRA–2013–050]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Over-the-Counter Equity Trade Reporting and OATS Reporting

November 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

FINRA is proposing to amend FINRA rules governing the reporting of (i) over-the-counter (''OTC'') transactions in equity securities to the FINRA Facilities; [3] and (ii) orders in NMS stocks and OTC Equity Securities to the Order Audit Trail System (''OATS'').

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA is proposing amendments to the equity trade reporting rules relating to reporting (i) an additional time field for specified trades, (ii) execution time in milliseconds, (iii) reversals, (iv) trades executed on non-business days and trades that are more than one year old, and (v) ''step-outs.'' The proposed amendments also reflect changes in the processing of trades that are submitted to a FINRA Facility for clearing as well as technical changes to the rules relating to the OTC Reporting Facility (''ORF''). The proposed amendments also codify existing OATS guidance regarding reporting order event times to OATS in milliseconds.

Reporting an Additional Time Field

FINRA rules require that trade reports submitted to the FINRA Facilities include the time of trade execution, except where another time is expressly required by rule. For some transactions, there may be more than one critical time associated with a trade report (for example, the actual time of execution

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Specifically, the FINRA Facilities are the Alternative Display Facility (''ADF'') and the Trade Reporting Facilities (''TRF''), to which members report OTC transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS; and the OTC Reporting Facility (''ORF''), to which members report transactions in ''OTC Equity Securities,'' as defined in FINRA Rule 6420 (i.e., non-NMS stocks such as OTC Bulletin Board and OTC Market securities), as well as transactions in Restricted Equity Securities, as defined in FINRA Rule 6420, effected pursuant to Securities Act Rule 144A.

and a reference time on which the trade price may be based); however, only one time field is currently supported in FINRA trade reports. FINRA is proposing to require members to report an additional time field when reporting the following three types of transactions to FINRA.

With respect to Stop Stock transactions, as defined for purposes of the FINRA trade reporting rules,[4] and transactions that reflect an execution price that is based on a prior reference point in time (''PRP transactions''), current FINRA rules require that in lieu of the actual time the trade was executed, members report the time at which the member and the other party agreed to the Stop Stock price and the prior reference time, respectively.[5] For example, for Stop Stock transactions, if the parties agree to the Stop Stock price at 10:00 a.m. and the trade is executed at 11:00 a.m., the reporting member would report 10:00 a.m. in the execution time field. Similarly, for PRP transactions, if a member executes a market-on-open order at 10:30 a.m., the member would report 9:30 a.m. (the time the market opened).

FINRA is proposing to require members to include two times when reporting Stop Stock transactions and PRP transactions: (1) The time currently required by rule (i.e., the time at which the parties agree to the Stop Stock price or the prior reference time), and (2) the actual time of execution.[6] Thus, in the two examples above, the trade report would reflect times of 10:00 a.m. and 11:00 a.m. for the Stop Stock transaction, and 9:30 a.m. and 10:30 a.m. for the PRP transaction.[7] FINRA believes that requiring members to report additional time-related information will ensure a more accurate and complete audit trail and enhance FINRA's ability to surveil on an automated basis for compliance with FINRA trade reporting and other rules.

In addition, FINRA is proposing to require members to include two times when reporting block transactions using the Intermarket Sweep Order (''ISO'') exception (outbound) under SEC Rule 611 (''Order Protection Rule'') of Regulation NMS. Current FINRA guidance requires members to use the time that all material terms of the transaction are known as the execution time in the trade report.[8] The staff is proposing to adopt Supplementary Material in Rules 6282, 6380A and 6380B to require that trade reports reflect both the time the firm routed ISOs and the execution time, if different. With this additional time in the trade report, FINRA will be able to determine better whether ISOs were properly sent to other trading centers in compliance with the ISO exception to the Order Protection Rule. The staff notes that many firms have requested that they be permitted to provide the additional time to avoid the appearance of non-compliance with the Order Protection Rule.

Reporting Time in Milliseconds

FINRA trade reporting rules currently require members to report execution time to the FINRA Facilities in seconds (i.e., HH:MM:SS),[9] while the execution time for exchange trades is expressed in milliseconds (i.e., HH:MM:SS:mmm). Similarly, Rule 7440(a)(2) of the OATS rules currently requires members to record order event times in terms of hours, minutes, and seconds.[10] Because FINRA's audit trails consolidate exchange and OTC trades for regulatory purposes, sequencing consolidated transactions by execution time can be difficult with the different time formats, particularly in active stocks.[11]

To enhance and help bring consistency to FINRA's audit trail, FINRA is proposing amendments to require members to express time in milliseconds when reporting trades to the FINRA Facilities or order information to OATS, if the member's system captures time in milliseconds.[12] However, FINRA is not proposing to mandate that members enhance their systems to capture time in milliseconds.[13] Members with systems that do not capture milliseconds will be permitted to continue reporting time in seconds.[14]

FINRA believes that where trades are executed by electronic systems, such as alternative trading systems and automated execution systems, that already capture execution time in milliseconds, it should be relatively straightforward for members to report such trades to the FINRA Facilities using milliseconds. Thus, FINRA does not believe that the proposed requirement would be burdensome for members, nor would it require them to make significant systems changes. FINRA recognizes, however, that where trades are executed manually, e.g., by instant messaging or telephone, it would be more difficult for members to capture milliseconds for purposes of trade reporting. Accordingly, FINRA believes that it is appropriate not to require that all members capture and report time in milliseconds at this time.[15]

[4] ''Stop Stock transaction'' means a transaction resulting from an order in which a member and another party agree that the order will be executed at a Stop Stock price or better, which price is based upon the prices at which the security is trading at the time the order is received by the member. *See* Rules 6220, 6320A, 6320B and 6420.

[5] *See* paragraphs (F) and (G) of Rules 6282(a)(4), 6380A(a)(5), 6380B(a)(5) and 6622(a)(5).

[6] The rules provide that if the trade is executed within 10 seconds of the time the parties agree to the Stop Stock price or within 10 seconds of the prior reference time, then the designated modifier should not be used. FINRA also is proposing to amend the rules to clarify that in this instance, only the actual time of execution should be reported.

[7] Upon implementation of the proposed rule change, any Stop Stock and PRP transactions that are reported more than 10 seconds following execution will be marked late.

[8] *See* NASD *Member Alert: Guidance Relating to ''Execution Time'' for Purposes of Compliance with NASD Trade Reporting Rules* (June 13, 2007).

To comply with the ISO exception simultaneously with execution of a block transaction, the firm is required to route an ISO to execute against the full displayed size of any protected quotation with a price superior to the block transaction price (*see* question and answer 13 in NASD *Notice to Members 07–23* (May 2007)). Under certain circumstances, fills received from the execution of routed ISOs may be reflected in the size of the block transaction that is reported to FINRA with the ISO exception. Thus, under such circumstances, the execution time to be reported for the block transaction may be different than the time the member uses to determine whether ISOs were properly routed to execute against any better-priced protected quotations.

[9] *See, e.g.,* Rules 6282(c)(2)(H), 6380A(c)(5), 6380B(c)(5) and 6622(c)(5).

[10] Rule 7450 generally requires all applicable order information required to be recorded under Rule 7440 to be reported to OATS. Although Rule 7440(a)(2) requires order event times to be recorded to the second, FINRA published guidance in 2011 in connection with the expansion of OATS to all NMS stocks stating that firms that capture time in milliseconds should report time to OATS in milliseconds. *See Regulatory Notice* 11–03 (January 2011); *see also* OATS Reporting Technical Specifications, Cover Memo, at iv (May 3, 2011 ed.). The proposed rule change codifies this guidance into Rule 7440(a)(2).

[11] FINRA also notes that the Intermarket Surveillance Group (''ISG'') consolidated audit trail can accommodate execution times expressed in milliseconds. The ISG consolidated audit trail, which combines data from all exchange and OTC trades, is used by all self-regulatory organizations for regulatory purposes.

[12] *See* proposed Rules 6282.04, 6380A.04, 6380B.04, 6622.04, 7130.01, 7230A.01, 7230B.01, 7330.01, and 7440(a)(2).

[13] Members may, however, need to update their systems for OATS reporting to reflect the fact that other systems in the firm utilize milliseconds so that the times used by those systems (if in milliseconds) are accurately reflected in the member's OATS reports. As noted above, FINRA is not requiring firms to use milliseconds or update existing systems to use milliseconds; however, to the extent a firm's system uses milliseconds, those timestamps should be to the millisecond when they are reported to OATS.

[14] FINRA expects members that have systems currently capable of capturing time in milliseconds to continue to do so and not to make systems changes to revert to seconds unless they have a legitimate business reason for doing so (e.g., a member wants to use the services of a vendor that does not capture time in milliseconds). FINRA may review any such systems changes in the course of an inquiry or a member examination.

[15] The time fields in trade reports submitted to the FINRA Facilities currently do not accommodate

Reporting Reversals

FINRA rules require that if a trade that was previously reported to FINRA is cancelled, members must report the cancellation to the same FINRA Facility to which the trade was originally reported [16] and must do so within the time frames set forth in the rules.[17] Members report a ''cancellation'' when trades are cancelled on the date of execution and a ''reversal'' when trades are cancelled on a day after the date of execution.[18]

Today, when a member reports a reversal of a trade that was previously reported to a FINRA Facility, there is no requirement that the member provide information in the reversal report to identify the original trade.[19] FINRA is proposing to adopt new paragraph (3) in Rules 6282(j), 6380A(g) and 6380B(f) and new paragraph (4) in Rule 6622(f) to require that members identify the original trade in the reversal report by including the control number generated by the FINRA Facility and report date for the original trade report. This information will enable FINRA to better ''link'' reports of reversals with the associated previously reported trades and thereby allow FINRA to recreate more accurately the firm's market activity, as well as surveil for compliance with FINRA trade reporting rules.[20] In addition, paragraph (1) of these Rules, which provides that the member with the trade reporting obligation is responsible for submitting the cancellation in accordance with the procedures set forth in paragraph (2), would be amended to also refer to the proposed new provision.

FINRA is proposing several additional conforming amendments to the rules relating to trade cancellations.[21]

Reporting Non-Business Day Trades and T+365 Trades

Due to current systems limitations, trades executed on non-business days (i.e., weekends and holidays) and trades reported more than 365 days after trade date (T+365) cannot be reported to a FINRA Facility. Instead, these trades must be reported on ''Form T'' through FINRA's Firm Gateway.[22] Because these trades are not reported to a FINRA Facility, they are not captured for purposes of FINRA's automated surveillance systems, and regulatory fees under Section 3 of Schedule A to the FINRA By-Laws (''Section 3'') [23] must be assessed manually.

FINRA is making systems enhancements to enable members to submit reports of non-business day trades and T+365 trades electronically to the FINRA Facilities rather than using ''Form T'' to report such trades. As is the case today, non-business day trades and T+365 trades will not be submitted to clearing by the FINRA Facility [24] or disseminated. FINRA also is proposing to amend the rules to require that members report non-business day trades on an ''as/of'' basis by 8:15 a.m. the next business day following execution with the unique trade report modifier to denote their execution outside normal market hours; trades not reported by 8:15 a.m. will be marked late.[25] Thus, for example, a trade executed on Saturday must be reported by 8:15 a.m. the following Monday (since the FINRA Facilities are not open on Saturday to accept the trade report), and if the trade is not reported by that time, it will be marked late. This requirement will ensure that non-business day trades are properly sequenced for audit trail purposes. All T+365 trades will be reported on an ''as/of'' basis and will be marked late.

Reporting Step-Outs

Today, members can effectuate a ''step-out'' [26] by submitting a clearing-only report to a FINRA Facility. FINRA rules prohibit members from submitting to a FINRA Facility any non-tape report (including but not limited to reports of step-outs) associated with a previously executed trade that was not reported to that FINRA Facility.[27] For every step-

milliseconds, and therefore, FINRA does not know the exact number of firms that capture milliseconds for trade reporting purposes today. However, as noted above, OATS supports reporting in milliseconds. FINRA reviewed OATS data from October 11, 2013 through October 22, 2013, and the daily percentage of OATS execution reports that include time in milliseconds range from a low of 80.53% to a high of 82.96%. In addition, 189 firms submitted at least one execution report to OATS using milliseconds during this period. This suggests that for trade reporting purposes, a significant number of executing firms have systems that currently capture execution time in milliseconds and, as a result, would be subject to the proposed requirement.

[16] *See* Rules 7130(d), 7230A(i), 7230B(h) and 7330(h).

[17] *See, e.g.,* Rules 6282(j)(2), 6380A(g)(2), 6380B(f)(2), and 6622(f)(2) and (f)(3).

[18] *See, e.g.,* Trade Reporting FAQ #305.6, available at *www.finra.org/Industry/Regulation/Guidance/p038942#305.*

[19] Where the cancel functionality is used on the date of trade, the cancellation is automatically linked by the system to the original trade.

[20] FINRA notes that the FINRA Facilities will retain historic trade data and the amount of data retained will vary among the facilities. Members must maintain sufficient records to enable them to identify the control number and report date for any trades that they reverse, to the extent such information cannot be obtained from the data retained by the FINRA Facility.

[21] First, FINRA is proposing to expressly refer to ''reversals'' and ''reversed trades,'' as applicable, in Rules 6282(j), 6380A(g), 6380B(f), 6622(f), 7230A(f), 7230B(e) and 7330(f). Second, FINRA is proposing to amend Rules 7230A(f)(2), 7230B(e)(2) and 7330(f)(2) to clarify that members must comply with the deadlines ''and other requirements'' (i.e., the proposed new requirement to include the control number and report date of the original trade) set forth in the rules. Third, to bring consistency to the trade reporting rules, FINRA is proposing conforming changes to the ADF rules to (1) add the language ''with the exception of trades cancelled in accordance with the Rule 11890 Series'' in Rule 6282(j)(1), which is identical to the language in Rules 6380A(g)(1), 6380B(f)(1) and 6622(f)(1) relating to the other FINRA Facilities; (2) refer in Rule 6282(j)(1) to the member with the trade reporting obligation under ''Rule 6282'' (rather than the more general reference to the Rule 6280 Series); and (3) adopt new paragraph (e) in Rule 7130, which is identical to Rules 7230A(f), 7230B(e) and 7330(f), as amended herein, relating to the other FINRA Facilities. Finally, FINRA is proposing to include a reference to paragraph (f)(3) in Rule 6622(f)(1), which currently provides that members must comply with the requirements of paragraph (f)(2) when submitting cancellations and reversals. FINRA inadvertently did not add this reference when paragraph (f)(3) was originally adopted.

[22] Under FINRA rules, ''Form T'' is to be used for trade reporting only where electronic submission to a FINRA Facility is not possible. *See* Rules 6282(a)(5), 6380A(a)(8), 6380B(a)(8) and 6622(a)(8); *see also Trade Reporting Notice* 6/3/2011 (FINRA Reminds Firms of Their Trade Reporting Obligations and Announces New Submission Process for Form T).

[23] Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership in accordance with Section 3.

[24] FINRA is proposing to expressly provide that these trades will not be submitted to clearing in Rules 7140(b), 7240A(b), 7240B(b) and 7340(b).

[25] *See* Rules 6282(a)(2), 6380A(a)(2), 6380B(a)(2) and 6622(a)(2). FINRA also is proposing to delete the reference to ''T+1'' in subparagraph (D) of these rules because, e.g., the next business day would be greater than T+1 for a trade that is executed on a Saturday.

FINRA also is proposing a conforming change to Rule 6622(a)(3) to provide that any Securities Act Rule 144A transaction in a Restricted Equity Security that is executed on a non-business day must be reported by the time the ORF closes the next business day.

[26] A step-out allows a member firm to allocate all or part of a client's position from a previously executed trade to the client's account at another firm. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership. The step-out function was designed and implemented as a service to facilitate the clearing process for members involved in these types of transfers. *See* Trade Reporting FAQ 301.1, available at *www.finra.org/Industry/Regulation/Guidance/p038942#301.*

Each firm is required to report its side to effectuate a step-out; however, if the two firms have the proper agreements in place (i.e., an Automatic Give-Up (''AGU'') or Qualified Special Representative (''QSR'') agreement), the step-out can be effectuated with only one submission. The proposed rule change will not affect the process for effectuating a step-out with a single submission via AGU or QSR.

[27] *See* Rules 7130(d), 7230A(i), 7230B(h) and 7330(h). Thus, for example, a member cannot use one TRF to step out of an OTC trade that was originally reported to another TRF.

out, one member is stepping out of (or transferring) the position and the other member is stepping into (or receiving) the position. Where both members are submitting a clearing-only report to a FINRA Facility, each member currently must use the ''step-out'' indicator.

Some clearing firms have requested the ability to see whether their correspondents are stepping out or stepping in with respect to such transfers. Accordingly, FINRA is proposing to amend Rules 7130(d), 7230A(i), 7230B(h) and 7330(h) to provide that where both sides are submitting a clearing-only report to effectuate a step-out, the member transferring out of the position must report a step-out and the member receiving the position must report a step-in.[28]

Trade Processing

Rules 7140, 7240A and 7340 address the trade acceptance and comparison process for locking in trades submitted for clearing through the ADF, FINRA/Nasdaq TRF and ORF, respectively. When firms use the trade acceptance and comparison functionality, the reporting party reports the trade and the contra party subsequently either accepts or declines the trade.[29] Today, any trade that has been declined by the contra party is purged from the system at the end of trade date processing.[30]

FINRA is proposing to amend the rules to provide that rather than being purged, declined trades will be carried over and remain available for cancellation or correction by the reporting party or acceptance by the contra party. Declined trades that are carried over will not be available for the automatic lock-in process described in the rules and will not be sent to clearing unless the parties take action. FINRA also is proposing to amend paragraph (a) of Rules 7140, 7240A and 7340 to codify the existing requirement that the reporting member must cancel a declined trade that was previously reported for dissemination purposes to have the trade removed from the tape, i.e., the system does not remove the trade automatically from the tape.

In addition, FINRA is proposing technical changes to Rules 7140, 7240A and 7340 to reorganize and clarify the provisions relating to locking in trades for clearing in paragraph (a) and the processing of T+N (also referred to ''as/of'') trades in paragraph (b).[31]

FINRA notes that the proposed changes to Rules 7140, 7240A, 7240B and 7340 will not impact the way members report to FINRA and will not require members to make changes to their systems.[32]

ORF Technical Amendments

FINRA is proposing several additional technical amendments to the ORF rules. First, FINRA is proposing to close the ORF at 6:30 p.m. Eastern Time rather than 8:00 p.m. Thus, the ORF rules (i.e., the Rule 6620 and 7300 Series) will be amended to replace all references to 8:00 p.m. with 6:30 p.m. Members will be required to report trades executed after 6:30 p.m. on an ''as/of'' basis by 8:15 a.m. the next business day.[33] In addition, FINRA is proposing to delete the language in Rule 7320 that states ''unless the member has an alternative electronic mechanism pursuant to FINRA rules for reporting and clearing such transaction.'' This language is unnecessary, given that the ORF is the only electronic mechanism for reporting OTC transactions in OTC Equity Securities and transactions in Restricted Equity Securities effected under Rule 144A. FINRA also is proposing a minor change in terminology to delete the term and references to ''Browse'' from Rules 7310 and 7330. While the functionality remains available, the term itself does not apply to the ORF.

FINRA believes that the amendments proposed herein will enhance FINRA's audit trail and automated surveillance program, promote more consistent trade reporting by members and detect violations of FINRA trade reporting and other rules.

FINRA staff discussed the proposed rule change with several of FINRA's industry advisory committees in developing its approach. The committees supported the proposed amendments and did not believe that compliance would be particularly burdensome for firms. However, the committees noted the following specific comments and questions: (1) Several committee members requested that members be provided sufficient time to implement the necessary systems changes (FINRA has proposed an extended implementation period herein); (2) one committee member raised the possibility that members that currently capture execution time in milliseconds could revert their systems to seconds and still be in compliance with the rule (*see* note 14 herein); (3) one committee member asked if there would be instances where the control number for the original trade might not be available for purposes of reporting a reversal (*see* note 20 herein); (4) one committee member asked whether FINRA intends to mandate that firms capture execution time in milliseconds (FINRA notes that there is currently no intention to adopt such a requirement; moreover, any such proposal would be subject to a separate rule filing and notice and comment); and (5) with respect to the proposal to close the ORF at 6:30 p.m., a committee member asked whether FINRA would grant an extension beyond 6:30 in the event of

[28] FINRA notes that the step-out and step-in indicators should not be used when reporting a riskless principal or agency ''flip,'' both of which entail a change in beneficial ownership and must be reported to FINRA where specified by rule.

[29] Alternatively, one member may submit a locked-in trade on behalf of the other member, if the members have the requisite agreements in place. In that instance, the trade acceptance and comparison functionality would not be used.

FINRA notes that the FINRA/NYSE TRF currently does not offer trade acceptance and comparison, and as such, all trades must be locked-in prior to submission to this facility. *See* Rule 7240B.

[30] *See* Rules 7140(a), 7240A(b) and 7340(b).

[31] Specifically, FINRA is proposing to relocate the provision relating to carrying over and automatically locking in trades that is currently in paragraph (b) of Rules 7140, 7240A and 7340 to new paragraph (a)(2) of Rule 7140 and new paragraph (a)(3) of Rules 7240A and 7340. The process for automatically locking in trades for clearing will remain essentially the same: Any T to T+21 trade that has not been declined and remains open (i.e., unmatched or unaccepted) at the end of its entry day will be carried over and will be automatically locked in and submitted to DTCC if it remains open as of 2:30 p.m. the next business day. Trades that are T+22 or older that remain open will be carried over, but will not be subject to the automatic lock-in process (today such T+22 trades are not subject to the automatic lock-in process and are purged from the FINRA Facilities, but members may subsequently resubmit them).

FINRA also is proposing to include language in new Rule 7240B(b) clarifying that T+N (or ''as/of'') entries may be submitted until the FINRA/NYSE TRF closes for the day, i.e., 8:00 p.m. This language conforms to the language of Rules 7140(b), 7240A(c) and 7340(c) (as renumbered herein) relating to the other FINRA Facilities.

[32] FINRA also is proposing several non-substantive technical changes to rules that are otherwise being amended by this proposed rule change. First, FINRA is proposing to delete or replace references to ''TRACS'' with ''the ADF'' in Rule 6282 and to delete or replace references to ''TRACS'' or the ''TRACS trade comparison feature'' with ''the System'' in the Rule 7100 Series heading and Rule 7140. FINRA intends to submit a separate proposed rule change proposing this technical change throughout the Rule 6200, 7100 and 7500 Series. In addition, FINRA is proposing to (1) amend Rules 6380A(g)(1), 6380B(f)(1), 6622(f)(1), 7230A(f)(1), 7230B(e)(1) and 7330(f)(1) to insert ''the'' before the reference to the Rule 11890 Series; (2) delete the unnecessary reference to ''or cancellation'' in Rule 6282(j)(2)(G); (3) capitalize the term ''Rule'' in Rule 6380A(g)(2)(G); and (4) capitalize ''Eastern Time'' in Rule 6622(a)(5)(H).

[33] FINRA reviewed the volume of trades reported to the ORF between 6:30 p.m. and 8:00 p.m. and determined that they represent only a very small percentage of reported trades. For example, for all trades reported to the ORF between January 1, 2012 and February 6, 2013, the percentage of tape reports submitted between 6:30 p.m. and 8:00 p.m. compared to the overall number of trades range from a low of 0% to a high of 0.5% (on a single day), while non-tape reports range from a low of 0.0% to a high of 3.0% (on a single day).

market-wide systems problems or trading halts where members may need additional time to report (FINRA typically does not extend operating hours for the FINRA Facilities in such circumstances; however, FINRA takes unusual market conditions, such as extreme volatility in a security, or in the market as a whole, into consideration in determining whether a pattern or practice of late trade reporting exists).

FINRA believes that the proposed amendments reflect the least burdensome approach to obtaining the additional trade report information that FINRA needs for its audit trail and automated surveillance program. For example, with respect to the proposed additional time field, a possible alternative would be to retain a single time field in trade reports and require that members report the actual execution time for Stop Stock transactions and PRP transactions. In that instance, however, a number of false positives could potentially be generated (i.e., members would appear to have violated FINRA and other rules), requiring members to respond to FINRA inquiries and investigations. The current approach of requiring members to report the reference time instead of the actual execution time is cumbersome for FINRA staff and members alike, because the actual execution time must be reviewed during member examinations. Having both times reflected in the trade report will streamline member reviews and facilitate members' ability to demonstrate compliance with FINRA and other rules.

Furthermore, with respect to the millisecond requirement, requiring only those members with systems that capture time in milliseconds to report in milliseconds is less burdensome for members than mandating that all members capture and report time in milliseconds. With respect to the linking requirement, FINRA does not believe that there is a viable alternative to requiring that members include the control number and report date for the original trade. The member that reports the trade is also required to report the reversal, and as such, should have this information available for reporting purposes. FINRA also believes that requiring members to report trades executed on non-business days and T+365 trades to the FINRA Facilities is more efficient for members than retaining the current ''Form T'' reporting process.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* FINRA proposes that the effective date of the proposed rule changes to the trade reporting rules will be no earlier than April 15, 2014, and no later than September 30, 2014, and the effective date of the proposed rule change to the OATS rules will be no later than 45 days after Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[34] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed change to require members to report additional time-related information for Stop Stock transactions, PRP transactions and block transactions using the ISO (outbound) exception under Regulation NMS is consistent with the Act because it will ensure a more accurate and complete audit trail and enhance FINRA's ability to surveil on an automated basis for compliance with FINRA trade reporting and other rules.

FINRA believes that the proposed change to require members to report to OATS and the FINRA Facilities in milliseconds if their systems capture time in milliseconds is consistent with the Act because it will enhance and help bring consistency to FINRA's audit trail. FINRA believes that it is appropriate not to require that all members capture and express time in milliseconds, in light of the difficulty that members may face in capturing time for certain order events and trades in milliseconds, such as manually executed trades. FINRA does not believe that the proposed change would be burdensome or require members with execution systems that capture time in milliseconds to make significant systems changes to comply, and FINRA's industry advisory committees did not raise concerns about the proposed requirement.

FINRA believes that the proposed change to require members to provide information to identify the original trade when reporting reversals to FINRA is consistent with the Act because it will enable FINRA to recreate more accurately members' market activity and surveil for compliance with FINRA trade reporting rules.

FINRA believes that the proposed changes relating to reporting trades executed on non-business days and T+365 trades are consistent with the Act because these trades are required to be reported today, and the changes would make the reporting process more efficient for members. In addition, the proposed change to require that non-business day trades be reported by 8:15 a.m. the next business day following execution is consistent with the Act because it is consistent with the existing reporting requirements for trades that are executed on business days during the hours that the FINRA Facilities are closed and also will ensure that the trades are properly sequenced for audit trail purposes.

FINRA believes that the proposed change to require members to use a new ''step-in'' indicator is consistent with the Act because it will more accurately reflect the transfer (in that only one member steps out of, and one member steps into, the position) and will provide greater transparency for clearing firms whose correspondents effect these transfers.

FINRA believes that the proposed changes to Rules 7140, 7240A, 7240B and 7340 are consistent with the Act because they will update the rules to reflect changes in the processing of trades by the FINRA Facilities and will not impact the way members report to FINRA or require them to make changes to their systems.

Similarly, FINRA believes that the proposed technical changes to the ORF rules (i.e., to reflect the closing at 6:30 p.m., and to delete terms and language that are inapplicable to the ORF) are consistent with the Act because they will ensure that the rules accurately reflect the operation of the ORF.

Finally, FINRA believes that those aspects of the proposed rule change that make technical or conforming changes to the rules are consistent with the Act because they are non-substantive and are designed to bring clarity and, to the extent practicable, uniformity to the trade reporting rules relating to the FINRA Facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Not all of the proposed amendments will impact the way members report to FINRA or require members to make systems changes. For example, the changes to trade processing will not require members to change the way they report to FINRA, and the proposed millisecond requirement will not require members to begin capturing time in milliseconds.

[34] 15 U.S.C. 78*o*–3(b)(6).

To the extent that the proposed amendments will change the way members report to FINRA, they will affect only those members that execute and report OTC equity trades to FINRA.[35] For example, many firms, including smaller firms, route their order flow to another firm, e.g., their clearing firm, for execution, and as the routing firm, they do not have the trade reporting obligation. Today, on average, only several hundred members regularly report trades to the FINRA Facilities. For example, for the eight-month period from August 2012 through April 2013, 456 firms reported at least one trade, and of those firms, 186 reported fewer than 10 trades. Thus, the amendments will have no impact on many members.

Nonetheless, some members will need to make systems programming changes to comply with the proposed amendments (e.g., members that execute the types of transactions for which two times will be required, members that execute trades on non-business days, etc.). FINRA believes these changes will enhance FINRA's audit trail and surveillance capabilities and will not significantly burden competition as all firms that report OTC trades to FINRA will be subject to the same standard. The staff proposes to provide members a sufficient implementation period to accommodate such changes and may phase in implementation, if appropriate, to lessen the impact on members, as well as any potential burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–FINRA–2013–050 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–050, and should be submitted on or before December 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28572 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[35] FINRA trade reporting rules require that for transactions between members, the ''executing party'' report the trade to FINRA. For transactions between a member and a non-member or customer, the member must report the trade. ''Executing party'' is defined under FINRA rules as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. *See* Rules 6282(b), 6380A(b), 6380B(b) and 6622(b).

[36] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70940; File No. SR–Phlx–2013–113]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Offer a Customer Rebate

November 25, 2013.

**I. Introduction**

On October 31, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''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 the Customer Rebate Program in Section B of the Exchange's Pricing Schedule to increase Customer rebates available to certain market participants that transact Customer orders on Phlx. Phlx designated the proposed rule change as immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The Commission published notice of filing of the proposed rule change in the **Federal Register** on November 19, 2013.[4] To date, the Commission has received two comment letters on the proposal.[5]

Pursuant to Section 19(b)(3)(C) of the Act, the Commission hereby is: (1) Temporarily suspending File No. SR–Phlx–2013–113; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–Phlx–2013–113.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 70866 (November 13, 2013), 78 FR 69472 (''Notice'').

[5] *See* letters to Elizabeth M. Murphy, Secretary, Commission from: Michael J. Simon, Secretary, International Securities Exchange, LLC, dated November 11, 2013 (''ISE Letter''); and William O'Brien, Chief Executive Officer, Direct Edge Holdings LLC, dated November 13, 2013 (''DirectEdge Letter'').

## II. Summary of the Proposed Rule Change

The Exchange's proposal amends the Customer Rebate Program in Section B of the Exchange's Pricing Schedule. Under the Customer Rebate Program, the Exchange pays tiered rebates to members for certain Customer orders executed on Phlx.[6] In general, the tiers (there are four tiers) are based on Customer volume in multiply-listed options that member organizations under Common Ownership [7] transact monthly on Phlx as a percentage of total national Customer volume in multiply-listed options.[8] Phlx's proposal provides an additional $0.02 per contract rebate for Customer orders executed on Phlx that currently qualify for the Customer Rebate Program provided the member organization, together with any affiliate under Common Ownership, transacts aggregate Customer volume on Phlx, The NASDAQ Options Market LLC (''NOM'') and/or NASDAQ OMX BX, Inc. (''BX Options'') (collectively, the ''NASDAQ OMX exchanges'') in multiply-listed options that is electronically delivered and executed equal to or greater than 2.5% of national Customer volume in multiply-listed options in a month.[9]

## III. Summary of Comments Received

As noted above, the Commission has received two comment letters on the proposed rule change.[10] Among other things, both commenters believe that further scrutiny and public comment of the proposal is necessary given the unprecedented nature of the proposed rule change and the potential impact the proposal could have across all exchange pricing going forward.[11] One commenter notes that the proposed rule change links the fees for transactions executed on Phlx to executions on two exchanges under common ownership with Phlx, which is unprecedented.[12] This commenter states its view that the proposed rule change raises issues of such critical importance to the national market system that it is imperative that the fee change not be in effect during the period of public comment and Commission consideration.[13] Another commenter states its view that a period of public notice and comment pursuant to Section 19(b)(2) of the Act is strongly warranted.[14]

## IV. Suspension of SR–Phlx–2013–113

Pursuant to Section 19(b)(3)(C) of the Act,[15] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[16] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization 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.

The Commission believes it is appropriate in the public interest to temporarily suspend the proposal to solicit comment on and evaluate further the statutory basis for Phlx's proposal to vary the amount of the per contract Customer rebate that it will pay for certain transactions in options on its market based on the aggregate amount of volume in certain options across all three of the NASDAQ OMX exchanges.

In temporarily suspending the proposal, the Commission intends to further assess whether the additional Customer rebate, which is based on execution volume across the NASDAQ OMX exchanges, is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will assess whether the proposed rule change satisfies the requirements of the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[17]

Therefore, the Commission finds that it is appropriate in the public interest,[18] for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.

## V. Proceedings To Determine Whether To Approve or Disapprove SR–Phlx–2013–113

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [19] and 19(b)(2) of the Act [20] to determine whether Phlx's proposed rule change should be approved or disapproved. Pursuant to Section 19(b)(2)(B) of the Act,[21] the Commission is providing notice of the grounds for disapproval under consideration. As discussed above, the proposal increases the per contract Customer rebates for transactions on Phlx if the aggregate volume of Customer orders transacted by a member organization and its affiliates on Phlx, NOM and/or BX Options exceeds a specified volume threshold. The Act requires that exchange rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; that exchange rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and that exchange rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission intends to assess whether Phlx's proposal is consistent with these and other requirements of the Act.

The Commission believes it is appropriate to institute disapproval proceedings at this time in view of the legal and policy issues raised by the proposal. Institution of disapproval proceedings does not indicate, however, that the Commission has reached any conclusions with respect to the issues involved. The sections of the Act and the rules thereunder which are applicable to the proposed rule change include:

- Section 6(b)(4) of the Act,[22] which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues,

[6] For a more detailed description of the Customer Rebate Program in Section B of the Exchange's Pricing Schedule, *see* Notice, *supra* note 4.

[7] Phlx defines Common Ownership in the Preface to the Pricing Schedule as a member or member organizations under 75% common ownership or control.

[8] *See supra* note 6.

[9] For a more detailed description of the proposed rule change, *see* Notice, *supra* note 4.

[10] *See supra* note 5.

[11] *See* ISE Letter, *supra* note 5, at 1 and DirectEdge Letter, *supra* note 5, at 1.

[12] *See* ISE Letter, *supra* note 5, at 1.

[13] *See id.*

[14] *See* DirectEdge Letter, *supra* note 5, at 1.

[15] 15 U.S.C. 78s(b)(3)(C).

[16] 15 U.S.C. 78s(b)(1).

[17] *See* 15 U.S.C. 78f(b)(4), (5) and (8).

[18] For purposes of temporarily suspending the 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).

[19] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[22] 15 U.S.C. 78f(b)(4).

fees, and other charges among its members and issuers and other persons using its facilities.''

• Section 6(b)(5) of the Act,[23] which requires that the rules of a national securities exchange be designed to, among other things, ''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'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers.''

• Section 6(b)(8) of the Act,[24] which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate'' in furtherance of the Act.

**VI. Commission's Solicitation of Comments**

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as other relevant concerns. Such comments should be submitted by December 20, 2013. Rebuttal comments should be submitted by January 3, 2014. Although there do not appear to be any issues relevant to approval or disapproval which 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.[25]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–113 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–113. 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2013–113 and should be submitted on or before December 20, 2013. Rebuttal comments should be submitted by January 3, 2014.

*Conclusion*

*It is therefore ordered,* pursuant to Section 19(b)(3)(C) of the Act,[26] that File Number SR–Phlx–2013–113, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28724 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(8).

[25] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act 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).

[26] 15 U.S.C. 78s(b)(3)(C).

[27] 17 CFR 200.30–3(a)(57) and (58).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70925; File No. SR–FICC–2013–10]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish the Minimum Financial Requirements for the Existing Membership Category of Registered Investment Company Netting Members in the Government Securities Division

November 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 12, 2013, the Fixed Income Clearing Corporation (''FICC'') 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 FICC. 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 purpose of this rule filing is to amend the Rulebook (the ''Rules'') of the Government Securities Division (the ''GSD'') of FICC to establish the minimum financial requirements for the existing membership category of Registered Investment Company Netting Members (''RICs'').[3]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to the GSD Rules, the term ''Registered Investment Company Netting Member'' is an Investment Company (1) that is registered with the Commission, (2) admitted to membership in GSD's Netting System pursuant to the GSD Rules, and (3) whose membership in the Netting System has not been terminated.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(i) The purpose of this proposed rule change is to establish financial minimum requirements for RICs. Historically, the GSD has served the ''sell-side'' community (which primarily consists of entities such as banks and broker-dealers) and excluded RICs, which are key participants in the market served by the GSD. FICC believes the participation of this category as guaranteed service members will contribute to the safety, efficiency, and transparency of the market by allowing FICC to capture a greater part of the activity of its existing members and by introducing activity of current non-members to FICC. FICC also believes that RICs will benefit from the GSD netting service and the associated operational efficiencies of a central counterparty service. Currently, RICs are already a permitted category in the GSD Rules, however, the proposed rule change establishes their minimum financial requirements.[4] Specifically, Rule 2A (''Initial Membership Requirements'') of the GSD Rules will provide that the minimum financial requirement for RICs will be $100 million in net asset value. The rules have also been revised to state that the GSD will make its services available to Persons [5] in other categories as FICC may determine, subject to the approval of the Commission. This disclosure is also reflected in the Clearing Rules of the Mortgage-Backed Securities Division (''MBSD'').

Currently, GSD Rule 3, ''Ongoing Membership Requirements,'' permits GSD to assess a premium against a netting member whose Clearing Fund requirement exceeds its specified regulatory capital figure.[6] This premium will now include RICs because they will be netting members.

The concept of a ''Tier One Netting Member'' and a ''Tier Two Netting Member'' was introduced to the GSD Rules by rule filing SR–FICC–2010–09.[7] Tier One Netting Members will be subject to potential loss mutualization, whereas Tier Two Netting Members will not be subject to loss mutualization due to a legal prohibition. Under the present rule filing, the registered investment company members will be Tier Two Netting Members because they are not permitted by law to mutualize loss.

In rule filing SR–FICC–2010–09, FICC also introduced an amended loss allocation methodology whereby any loss allocation is first made against the retained earnings of FICC attributable to the GSD (after application of the defaulting member's Clearing Fund, funds-only settlement amounts and any other collateral on deposit with the GSD and any funds from any cross-margining or cross-guaranty agreements), in an amount up to 25 percent of FICC's retained earnings or such higher amount as may be approved by the Board of Directors of FICC. If a loss still remains, the GSD will divide the loss between the Tier One Netting Members and the Tier Two Netting Members. Tier One Netting Members will be allocated the loss applicable to them first by assessing the Clearing Fund deposit of each such member in the amount of up to $50,000, equally. If a loss remains, Tier One Netting Members will be assessed ratably, in accordance with the respective amounts of their Required Fund Deposits, based on the average daily amount of the member's Required Fund Deposit over the prior twelve months. Applicable Tier Two Netting Members will be assigned the Tier Two loss amount using a loss allocation methodology which does not provide for loss mutualization and is based on the activity that the Tier Two Netting Member conducted with the defaulting member.[8] As stated above, the RICs will be treated as Tier Two Netting Members under the present proposal.[9]

It should be noted that RICs will not be permitted to utilize the GCF Repo® service.

(ii) Statutory Basis.

The present filing is consistent with the requirements of the Section 17A(b)(3)(F) of the Act, as amended, and the rules and regulations thereunder applicable to FICC because the proposed rule change (1) establishes a statutory category which is consistent with Rule 17A(b)(3)(B) of the Securities Exchange Act of 1934 and thus prohibits the unfair discrimination in the admission of RICs, (2) permits the participation of RICs, thereby providing these firms with the benefits of central counterparty service, and (3) allows FICC to capture a greater market share of the activity of its existing members and non-members thus promoting the prompt and accurate clearance and settlement of securities transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Establishing minimum financial requirements for RICs and giving such entities the opportunity to join GSD is consistent with the Rule 17A(b)(3)(B) of the Securities Exchange Act of 1934. This Rule requires clearing agencies to provide access to its services for certain enumerated statutory categories and RICs are reflected as one of the statutory categories. Furthermore, subject to the Commission's approval of this rule filing, RICs will be subject to the same initial membership requirements and ongoing membership requirements as other GSD members. As a result, FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule changes have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

*D. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act*

(a) Not applicable.
(b) Not applicable.
(c) Not applicable.
(d) Not applicable.
(e) Not applicable.

**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**

[4] The membership requirements for RICs will be the same as those proposed for the central counterparty service of the Mortgage-Backed Securities Division.

[5] Pursuant to the GSD Rules, the term ''Person'' means a partnership, Corporation, limited liability corporation or other organization, entity, or individual.

[6] By way of example, under the current GSD Rules, if a member has a Clearing Fund requirement of $11.4 million and excess net capital of $10 million, its ''ratio'' is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of $1.4 million (which is equal to the amount by which the member's Clearing Fund requirement exceeds its excess net capital), or $1,596,000. The current GSD Rules provide that FICC has the right to: (i) Apply a lesser collateral premium (including no premium) based on specific circumstances (such as a member being subject to an unexpected haircut or capital charge that does not fundamentally change its risk profile), and (ii) return all or a portion of the collateral premium amount if it believes that the member's risk profile does not require the maintenance of that amount.

[7] Tier One Members include banks, dealers, futures commission merchants, government securities issuers and registered clearing agencies and Tier Two Members include RICs. *See* Securities Exchange Act Release No. 34–63986 (Feb. 28, 2011), 76 FR 12144 (Mar. 4, 2011).

[8] Please refer to Rule 4 Section 7 for the rules which pertain to the satisfaction of any loss incurred by FICC as a result of the failure of a defaulting member to fulfill its obligations to FICC.

[9] The MBSD has the same loss allocation methodology.

**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-comment@sec.gov.* Please include File Number SR–FICC–2013–10 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC- 2013–10. 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 of submission. 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 Section located at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2013/ficc/SR_FICC_2013_10.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–FICC–2013–10 and should be submitted on or before December 20, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–28569 Filed 11–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Request for Comments on Draft SBA Strategic Plan for FY 2014–2018

**AGENCY:** Office of Associate Administrator for Performance Management & Chief Financial Officer, Small Business Administration.

**ACTION:** Request for Comments on Draft SBA Strategic Plan for FY2014–2018.

**SUMMARY:** The Small Business Administration (SBA) is seeking public comment on its draft Strategic Plan for fiscal years 2014–2018. The draft plan is available on SBA's Web site at *http://www.sba.gov/about-sba/sba_performance/strategic_planning.*

**DATES:** Submit comments within two weeks of publication date.

**ADDRESSES:** Written comments can be provided by email, fax or U.S. mail.

Email: *strategicplan@sba.gov.*

Fax: (202) 205–7274.

Mail: U.S. Small Business Administration, Office of Performance Management & Chief Financial Officer, Attn: Strategic Plan Comments, 409 3rd St SW., Suite 6000, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Joshua Bull, *Joshua.Bull@sba.gov.*

**SUPPLEMENTARY INFORMATION:** The draft Small Business Administration FY2014–2018 Strategic Plan is provided for public input as part of the strategic planning process under the Government Performance and Results Modernization Act of 2010 (GPRA–MA) (Pub. L. 111–352) to ensure that Agency stakeholders are given an opportunity to comment on this plan.

This Strategic Plan provides a framework that will strengthen, streamline, and simplify SBA's programs while leveraging partnerships across the government and private sector to maximize the tools small business owners and entrepreneurs need to strengthen our economy, drive American innovation, and increase our global competitiveness. The SBA will have three overarching goals for the next five years: (1) Grow businesses and create jobs; (2) Serve as the voice for small business; and, (3) Build an Agency that meets the needs of today's and tomorrow's small businesses. Each goal contains objectives which are directly tied to performance both at the individual level and Agency-wide.

The FY2014–2018 Strategic Plan contains only slight modifications to the existing FY2011–2016 Strategic Plan. This draft document chiefly refines the language of existing strategic objectives and strategies while adding two new strategic objectives concerning exports and supply chains, respectively. The text of the draft Strategic Plan FY2014–2018 is available through the SBA's Web site at *http://www.sba.gov/about-sba/sba_performance/strategic_planning.*

**Jonathan I. Carver,**

*Associate Administrator for Performance Management & Chief Financial Officer.*

[FR Doc. 2013–28623 Filed 11–27–13; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 8538]**

### 30-Day Notice of Proposed Information Collection: Recording, Reporting and Data Collection Requirements—Student and Exchange Visitor Information System (SEVIS)

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget up to December 30, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS

form number, information collection title, and the OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, ECA/EC, SA–5, Floor 5, Department of State, 2200 C Street NW., Washington, DC 20522–0505, who may be reached on 202–632–3206 or at *JExchanges@state.gov.*

**SUPPLEMENTARY INFORMATION:**

• *Title of Information Collection:* Recording, Reporting, and Data Collection—Student and Exchange Visitor Information System (SEVIS).

• *OMB Control Number:* 1405–0147.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange, ECA/EC.

• *Form Number:* Forms DS–3036, DS–3037 and DS–7000.

• *Respondents:* U.S. government and public and private organizations wishing to become U.S. Department of State designated sponsors authorized to conduct exchange visitor programs, and Department of State designated sponsors.

• *Estimated Number of Respondents:* 191,675 (DS–3036—60; DS–3037—1,415; DS–7000—190,200).

• *Estimated Number of Responses:* 1,572,192 (DS–3036—60; DS–3037—2,830; DS–7000—1,569,302).

• *Average Time Per Response:* DS–3036—8 hours; DS–3037—20 minutes; DS–7000—45 minutes.

• *Total Estimated Burden:* 1,302,807 hours (DS–3036—480 hours; DS–3037—943 hours; DS–7000—1,301,384 hours)

• *Frequency:* On Occasion.

• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:* The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2451, *et seq.*). Form DS–3036 has been revised to add a new certification for Responsible Officers and update Office addresses.

*Methodology:* Access to Forms DS–3036 and DS–3037 are found in the Student and Exchange Visitor Information System (SEVIS).

Dated: November 19, 2013.

**Robin J. Lerner,**

*Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2013–28673 Filed 11–27–13; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF TRANSPORTATION

**[Docket No. DOT–MARAD 2013–0135]**

## Agency Requests for Renewal of a Previously Approved Information Collection(s): Application for Conveyance of Port Facility Property

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collection is necessary for MARAD to determine whether (1) the applicant is committed to the redevelopment plan; (2) the plan is in the best interests of the public, and (3) the property will be used in accordance with the terms of the conveyance and applicable statutes and regulations.

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

**DATES:** Written comments should be submitted by January 28, 2014.

**ADDRESSES:** You may submit comments [identified by Docket No. DOT–MARAD–2013–0135] through one of the following methods:

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

• *Fax:* 1–202–493–2251

• *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Linden Houston, Office of Deepwater Ports and Offshore Activities, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: (202) 366–4839 or EMail: *Linden.Houston@dot.gov.* Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2133–0524.

*Title:* Application for Conveyance of Port Facility Property.

*Form Numbers:* MA–1047.

*Type of Review:* Renewal of a currently approved information collection.

*Background:* Public Law 103–160, which is included in 40 U.S.C. 554 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program.

*Respondents:* Eligible state and local public entities.

*Number of Respondents:* 10.

*Frequency:* Annually.

*Total Annual Burden:* 440.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov*.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Dated: November 21, 2013.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–28645 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. DOT–OST–2012–0087]**

### Advisory Committee for Aviation Consumer Protection

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Notice of fifth meeting of advisory committee.

**SUMMARY:** This notice announces the fifth meeting of the Advisory Committee for Aviation Consumer Protection.

**DATES:** The fifth meeting of the advisory committee is scheduled for December 16, 2013, from 9:00 a.m. to 4:00 p.m., Eastern Time.

**ADDRESSES:** The meeting will be held in the Oklahoma City Room (located on the lobby level of the West Building with capacity for approximately 100 attendees) at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC. Attendance is open to the public up to the room's capacity; however, since access to the U.S. DOT headquarters building is controlled for security purposes, any member of the general public who plans to attend this meeting must notify the registration contact noted below at least five (5) calendar days prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** To register to attend the meeting, please contact Amy Przybyla, Research Analyst, CENTRA Technology, Inc., *przybylaa@centratechnology.com;* 703–894–6962. For other information please contact Kathleen Blank Riether, Senior Attorney, Office of Aviation Enforcement and Proceedings, *kathleen.blankriether@dot.gov;* U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590; 202–366–9342 (phone), 202–366–5944 (fax).

**SUPPLEMENTARY INFORMATION:** On May 24, 2012, the Secretary, as mandated by Section 411 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95, 126 Stat. 11 (2012)), established the Advisory Committee on Aviation Consumer Protection (ACACP) and announced those persons appointed as members. The committee's charter, drafted in accordance with the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, sets forth policies for the operation of the advisory committee and is available on the Department's Web site at *http://facasms.fido.gov/committee/charters.aspx?cid=2448&aid=47.*

The fifth meeting of the ACACP initially was scheduled for Tuesday, October 8, 2013, from 9:00 a.m. to 4:00 p.m. Eastern Time at the Federal Aviation Administration headquarters in Washington, DC. Due to the lapse in funding of the Federal government on October 1, 2013, key preparations for the fifth committee meeting by law had to be placed on hold until funding was resumed. The meeting has been rescheduled for Monday, December 16, 2013, from 9:00 a.m. to 4:00 p.m. Eastern Time in the Oklahoma City Room at the U.S. Department of Transportation headquarters, 1200 New Jersey Avenue SE, Washington, DC. The agenda for the meeting includes an update from the DOT's Office of Aviation Enforcement and Proceedings (Enforcement Office) on the implementation status of the ACACP's initial set of recommendations to the Secretary submitted to Congress on March 22, 2013. Other issues to be discussed include making consumer rights information available to the public on airport posters, delays in the clearance of passengers arriving on international flights through the U.S. Customs and Border Protection facilities at U.S. airports, customized airfare pricing and potential consumer protection issues, and the ACACP's recommendations for calendar year 2013 to the Secretary of Transportation on additional needed consumer protection measures.

As announced in the notices of previous meetings of the ACACP, the meeting will be open to the public, and, time permitting, comments by members of the public are invited. Since access to the U.S. Department of Transportation headquarters building is controlled for security purposes, we ask that any member of the general public who plans to attend the fifth meeting notify the Department contact noted above no later than five (5) calendar days prior to the meeting. Attendance will be necessarily limited by the size of the meeting room.

Members of the public may present written comments at any time. The docket number referenced above (OST–2012–0087, available at *https://www.regulations.gov,*) has been established for committee documents including any written comments that may be filed. At the discretion of the Chairperson and time permitting, after completion of the planned agenda, individual members of the public may provide oral comments. Any oral comments presented must be limited to the objectives of the ACACP and will be limited to five (5) minutes per person. Individual members of the public who wish to present oral comments must notify the Department contact noted above via email that they wish to attend and present oral comments at least five (5) calendar days prior to the meeting.

Persons with a disability who plan to attend the meeting and require special accommodations, such as an interpreter for the hearing impaired, should notify the Department contact noted above at least seven (7) calendar days prior to the meeting. Persons attending with a service animal should also advise us of that fact so that it can be taken into account in connection with space and possible allergy issues.

Notice of this meeting is being provided in accordance with the FACA and the General Services Administration regulations covering management of Federal advisory committees.

**Authority:** (41 CFR Part 102–3.)

Issued in Washington, DC, on November 25, 2013.

**Samuel Podberesky,**

*Assistant General Counsel for Aviation Enforcement & Proceedings, U.S. Department of Transportation.*

[FR Doc. 2013–28659 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice for Laughlin/Bullhead International Airport, Bullhead City, Arizona

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Mohave County Airport Authority, for Laughlin/

Bullhead International Airport under the provisions of 49 U.S.C. 47501 et seq. (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

**DATES:** *Effective Date:* This notice is effective November 29, 2013 and applicable on November 21, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jared M. Raymond, Airport Planner, Federal Aviation Administration, 2800 N. 44th Street, Suite 510, Phoenix, Arizona 85008, Telephone: (602) 379–3022.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Laughlin/Bullhead International Airport are in compliance with applicable requirements of 14 Code of Federal Regulations (CFR) Part 150 (hereinafter referred to as ''Part 150''), effective November 21, 2013. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Mohave County Airport Authority. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: Exhibit 1 Existing (2012) Noise Exposure Map and Exhibit 2 Future (2017) Noise Exposure Map. The existing and future Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configuration and runway expansion (future), noise sensitive land uses such as residential, noise sensitive institutions, and schools are shown within the existing and future noise contours. Arrival and departure flight tracks for the existing and five-year forecast Noise Exposure Maps are found in Exhibits 2C, 2D, 2F, 2G and 2H. Table 2C summarized the operational fleet mix for Laughlin/Bullhead International Airport for existing (2012) and future (2017) conditions. Table 2D summarizes the type and frequency (in percentage) of aircraft operations (including nighttime operations) for existing conditions (2012) and future conditions (2017). The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on November 21, 2013.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations during normal business hours:

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261;

Federal Aviation Administration, Phoenix Airports Field Office, 2800 N. 44th Street, Suite 510, Phoenix, Arizona 85008;

Laughlin/Bullhead International Airport, 2550 Laughlin View Drive, Suite 117, Bullhead City, Arizona 86429; Monday thru Friday 8:00 a.m. to 5:00 p.m.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, on November 21, 2013.

**Mark A. McClardy,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 2013–28643 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### MAP–21 Comprehensive Truck Size and Weight Limits Study Public Meeting and Outreach Sessions

**AGENCY:** Federal Highway Administration (FHWA); DOT.

**ACTION:** Notice of Public Meetings.

**SUMMARY:** This notice announces two upcoming public meetings on the Moving Ahead for Progress in the 21st Century Act (MAP–21) Comprehensive Truck Size and Weight Limits Study. The Transportation Research Board Committee for Review of the U.S. Department of Transportation (DOT) Truck Size and Weight Limits Study will hold a public meeting that will include presentations from DOT on the Desk Scans produced by the DOT MAP–21 Comprehensive Truck Size and Weight Limits Study. The DOT will hold a second public outreach session to provide an update on the progress of the MAP–21 Comprehensive Truck Size and Weight Limits Study.

**DATES:** The National Academies' Transportation Research Board Committee for Review of the DOT Truck Size and Weight Study—Public Meeting will be held on n December 5, 2013 from 10:30 a.m. to 6 p.m., e.t. The DOT Comprehensive Truck Size and Weight Limits Study—Second Public Outreach Session (Webinar) will be held on

December 18, 2013 from 1 p.m. to 5 p.m., e.t.

**ADDRESSES:** The National Academies' Transportation Research Board Committee for Review of the DOT Truck Size and Weight Limits Study—Public Meeting will be held at the Keck Center of the National Academies, 500 Fifth Street NW., Washington, DC, Room 101. The DOT Comprehensive Truck Size and Weight Limits Study—Second Public Outreach Session will be held as a Webinar. Additional Webinar details and registration information will be sent to individuals who have registered on the Comprehensive Truck Size and Weight Limits Study email list and will also be posted on FHWA's Truck Size and Weight Web site.

**FOR FURTHER INFORMATION CONTACT:** Email *CTSWStudy@dot.gov*, or contact Mr. Thomas Kearney at: (518) 431–8890, *Tom.Kearney@dot.gov*; Edward Strocko, (202) 366–2997, *ed.strocko@dot.gov;* Office of Freight Management and Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

## Background

The MAP–21 (Pub. L. 112–141) requires DOT to conduct a Comprehensive Truck Size and Weight Limits Study (MAP–21 § 32801) addressing differences in safety risks, infrastructure impacts, and the effect on levels of enforcement between trucks operating at or within Federal truck size and weight (TSW) limits and trucks legally operating in excess of Federal limits; comparing and contrasting the potential safety and infrastructure impacts of alternative configurations (including configurations that exceed current Federal TSW limits) to the current Federal TSW law and regulations; and, estimating the effects of freight diversion due to these alternative configurations.

The FHWA has requested a National Research Council (NRC) committee to be convened by TRB to provide a peer review of the Comprehensive Truck Size and Weight Limits Study. This will include two separate peer reviews. The first peer review will assess the Desk Scan Reports based on their thoroughness in reviewing the existing literature, analysis of existing models and data for conducting the comprehensive study, and an overall synthesis of the preceding body of work. The second peer review will be on the extent to which the technical analysis and findings address the issues identified by Congress in Section 32801 of MAP–21.

## Public Meetings

On December 5, 2013 from 10:30 a.m. to 6:00 p.m., e.t., the Transportation Research Board Committee for Review of the DOT Truck Size and Weight Limits Study will hold a public meeting at the Keck Center of the National Academies, 500 Fifth Street NW., Washington, DC, Room 101. The program will include presentations from DOT on the Desk Scans produced by the DOT MAP–21 Comprehensive Truck Size and Weight Limits Study. The Transportation Research Board will post the meeting agenda at: *http://www8.nationalacademies.org/cp/projectview.aspx?key=49568.*

On December 18, 2013 from 1:00 p.m. to 5:00 p.m., e.t., DOT will hold the second public outreach session to provide an update on the MAP–21 Comprehensive Truck Size and Weight Limits Study progress. This session will be held as a Webinar and will include a review of draft Desk Scans, project plans, selected truck configurations, and an updated project schedule. This Webinar will be recorded. Prior to the Webinar, DOT will post documents at: *http://www.ops.fhwa.dot.gov/freight/sw/map21tswstudy/index.htm.* The DOT will accept comments on these materials through January 3, 2014. Additional Webinar details and registration information will be sent to individuals who have registered on the Comprehensive Truck Size and Weight Limits Study email list and posted on FHWA's Truck Size and Weight Web site.

The DOT invites participation in these meetings by all those interested in the MAP–21 Comprehensive Truck Size and Weight Limits Study.

Issued on: November 22, 2013.

**Jeffrey A. Lindley,**

*Associate Administrator for Operations.*

[FR Doc. 2013–28582 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–22–P**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Sunshine Act Meeting; Unified Carrier Registration Plan Board of Directors

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Unified Carrier Registration Plan Board of Directors Meeting.

**TIME AND DATE:** The meeting will be held on December 5, 2013, from 12:00 Noon to 3:00 p.m., Eastern Standard Time.

**PLACE:** This meeting will be open to the public via conference call. Any interested person may call 1–877–820–7831, passcode, 908048 to listen and participate in this meeting.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: November 22, 2013.

**Larry W. Minor,**

*Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.*

[FR Doc. 2013–28797 Filed 11–26–13; 4:15 pm]

**BILLING CODE 4910–EX–P**

---

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2011–0026]**

### Notification of Application for Approval of a Railroad Safety Program Plan

In accordance with part 236 of Title 49 Code of Federal Regulations and 49 U.S.C. 20502(a), this document provides the public notice that by a letter dated October 15, 2013, the Long Island Rail Road petitioned the Federal Railroad Administration (FRA) for approval of a Railroad Safety Program Plan (RSPP) revision dated September 18, 2013. FRA assigned the petition Docket Number FRA–2011–0026.

The petition, the RSPP, and any related documents have been placed in Docket Number FRA–2011–0026 and are available for public inspection. FRA is not accepting comments on the RSPP revision.

A copy of the petition, as well as any written communications concerning the petition, is available for review and download online at *http://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.

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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2013–28690 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2013–0114]**

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated September 26, 2013, Norfolk Southern Corporation (NS) and Bay Coast Railroad (BCR) jointly petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0114.

*Applicant:* Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

Bay Coast Railroad, Mr. Larry Lemond, Vice President Operations, 202 Mason Avenue, Cape Charles, VA 23310.

NS and BCR seek approval of the proposed modification of the Coleman Place Interlocking, Milepost (MP) A1.4, Sewells Point Branch, Virginia Division, Norfolk, VA. The Coleman Place Interlocking will be redesigned and renewed with electronic control equipment and new signals arranged to the existing track configuration. Due to previous removal of the diamond crossing at the interlocking, the westbound home signal and the start of traffic control territory will move west approximately 1,000 feet. The existing No. 2 power-crossover switch will be converted to hand operation.

The reason given for the proposed changes is that the need for the power-crossover switch no longer exists with the removal of the diamond crossing.

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 January 13, 2014 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2013–28688 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2013–0111]**

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated October 4, 2013, CSX Transportation (CSX) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0111.

*Applicant:* CSX Transportation, Mr. David B. Olson, Chief Engineer Communications and Signals, 500 Water Street, Speed Code J–350, Jacksonville, FL 32202.

CSX seeks approval of the proposed discontinuance of the traffic control system (TCS) on main tracks between Control Point (CP) Beck, Milepost (MP) CH–27.0 and CP Seymour, MP CH–148.17, on the Chicago Division, Plymouth Subdivision, Plymouth, MI. A total of 51 controlled signals and 58 automatic signals will be removed, with 11 power-operated switches converted to hand operation. Approach signals will be installed at MPs CH–29.0, CH–53.8, CH–50.9, CH–86.5, CH–83.6, and CH–147.4. CSX Rule 261 will be replaced and operation will be under Form D Control System and track warrant control rules. There are two locations that will remain as TCS, with signals and power-operated switches remaining in operation. Those locations are at Ann Pere, MP CH–52.87, at a grade crossing with the Great Lakes Central Railroad, and W.E. Trowbridge, MP CH–84.9, at a grade crossing with the Grand Trunk Western Railroad. These locations will continue to be operated under CSX Rule CPS–261.

The reason given for the proposed changes is that CPS Rule 261 is no longer needed for present-day operations.

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 January 13, 2014 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2013–28684 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2013–0115]**

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated October 7, 2013, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0115.

*Applicant:* Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

NS seeks approval of the proposed discontinuance of automatic signals and the installation of cab signals without wayside signaling between Control Point (CP) Kiski, Milepost (MP) LC 47.8, and CP Penn, MP LC 77.9, on the Conemaugh Line, Pittsburgh Division. CP Kiski, CP Harris, CP Beale, CP Sharp, and CP Etna will be upgraded from existing, legacy, relay-based signal systems to electronic-based signal systems. Cab signals will be installed and the automatic color light signals at MPs LC 53.9, LC 57.1, LC 63.1, LC 64.7, LC 67.6, and LC 75.1, will be removed. ''Block Clear'' signals will be provided at all CPs in the event of an onboard cab failure while in route.

The reason given for the proposed changes is to facilitate train moves and eliminate any potential nonconformity between the wayside signals and cab signal. Also, since Positive Train Control is installed on this line, there will not be different signal systems competing with each other.

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 January 13, 2014 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2013–28689 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2009–0074]**

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations, this document provides the public notice that by a document dated October 15, 2013, the Canadian National Railway (CN), Brotherhood of Locomotive Engineers and Trainmen (BLET), and United Transportation Union (UTU) have jointly petitioned the Federal Railroad Administration (FRA) for an extension of their waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2009–0074.

In their petition, CN, BLET, and UTU seek relief from 49 U.S.C. 21103(a)(4), which, in part, requires a train employee to receive 48 hours off duty after initiating an on-duty period each day for 6 consecutive days. Specifically, CN, BLET, and UTU seek a 1-year extension of the waiver to allow a train employee to initiate an on-duty period each day for 6 consecutive days

followed by 24 hours off duty. In support of the request, CN provided an analysis of its safety data. The analysis found that since 2012 only one human factor-caused accident occurred on a job where employees were working a scheduled assignment allowed under the existing waiver.

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 January 13, 2014 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2013–28685 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2013–0020]**

### 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 February 4, 2013, GE Transportation (GE) 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 232—Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices. FRA assigned the petition Docket Number FRA–2013–0020.

Specifically, GE requests relief from 49 CFR 232.409(d), *Inspection and testing of end-of-train devices,* as applied to its STR–1821 dual receive data transceivers. The current rule requires telemetry equipment to be tested for accuracy and calibrated, if necessary, at least every 368 days. The date and location of the last calibration or test, as well as the name of the person performing the calibration or test, must be legibly displayed on a weather-resistant sticker or other marking device affixed to the outside of both the front and rear of the unit.

In its petition, GE states that the STR–1821 radio is the type accepted by the Federal Communications Commission under a Grant of Equipment Authorization with identifier OQW–STR1820. Prior to shipment, each STR–1821 is tested by its supplier, Summation Research, Inc. (SRI), to specifications including frequency and modulation. SRI then affixes a sticker that indicates the date the unit passed testing. These transceivers use a master reference oscillator to determine the frequency stability of the transmitted signal. The actual transmitted signal is phase-locked to this master oscillator by the phase-locked loop (PLL). Circuitry within the PLL determines when the system is in ''lock'' and will prevent or inhibit transmission if the transmitted signal is not in frequency. The master oscillator itself is specified to a much higher stability than the resulting transmitted frequency required by Federal regulations. This oscillator is used in all of SRI's mobile data radio offerings and, to date, has never failed due to being out of tolerance. GE states that, due to the transceiver's development history, key features, and proven performance, approval of this waiver request to eliminate annual calibration will be in the public interest and consistent with public safety.

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 January 13, 2014 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's

complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2013–28686 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2013–0108]**

### 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 October 10, 2013, New Jersey Transit Rail (NJTR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain Federal hours of service requirements for train employees engaged in commuter or intercity rail passenger transportation contained at 49 CFR 228.405(a)(3). FRA assigned the petition Docket Number FRA–2013–0108.

In its petition, NJTR seeks a temporary waiver, from January 31, 2014, to February 3, 2014, allowing train employees to exceed the consecutive day limitations of initiating on-duty periods to accommodate an anticipated increase in business during the 2014 Super Bowl weekend. Specifically, NJTR is requesting relief from the mandatory time off requirements of 24 consecutive hours and 2 consecutive calendar days following the initiation of on-duty periods for 6 and 14 consecutive calendar days.

In support of its request, NJTR explained that, because of the extended nature of the required additional service and the possibility of workforce illness or weather events, manpower shortfalls may occur and a waiver from the rest requirements would provide greater certainty in filling extra jobs. In addition, NJTR expressed that its safety record demonstrates that its employees worked safely before the Federal rest requirements, and that it is committed to taking additional steps to ensure fatigue is minimized.

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 January 13, 2014 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

[FR Doc. 2013–28687 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. DOT–MARAD–2013–0137]**

### Request for Comments of a Previously Approved Information Collection

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**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 is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on September 3, 2013 (54368, Vol. 78, No. 170).

**DATES:** Comments must be submitted on or before December 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Patricia Ann Thomas, Office of Sealift Support, Maritime Administration, W25–314, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–2646 or EMAIL: *patricia.thomas@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title:* Merchant Marine Medals and Awards.

*OMB Control Number:* 2133–0506.

*Type of Request:* Renewal of a Previously Approved Information Collection.

*Abstract:* This collection of information provides a method of awarding merchant marine medals and decorations to masters, officers, and crew members of U.S. ships in recognition of their service in areas of danger during the operations by the Armed forces of the United States in World War II, Korea, Vietnam, and Operation Desert Storm.

*Affected Public:* Masters, officers and crew members of U.S. ships.

*Estimated Number of Respondents:* 550.

*Estimated Number of Responses:* 550.

*Annual Estimated Total Annual Burden Hours:* 550.

*Estimated Completion Time per Response:* 1 hour.

*Frequency of Collection:* Annually.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of

the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Dated: November 21, 2013.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–28661 Filed 11–27–13; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD—2013 0136]**

### Agency Requests for Renewal of a Previously Approved Information Collection(s): Supplementary Training Course Application

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments

**SUMMARY:** The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collection is necessary for eligibility assessment, enrollment, attendance verification and recordation. Without this information, the courses would not be documented for future reference by the program or individual student. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

**DATES:** Written comments should be submitted by January 28, 2014.

**ADDRESSES:** You may submit comments identified by Docket No. MARAD–2013–0136 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Fax:* 1–202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** Michael Romstadt, Training Instructor (Firefighting), Maritime Administration, 1200 New Jersey Avenue SE., W28–302, Washington, DC 20590; Telephone: (419) 259–6362 or email: *Michael.Romstadt@dot.gov.* Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2133–0030.

*Title:* Supplementary Training Course Application.

*Form Numbers:* MA–823

*Type of Review:* Renewal of an information collection.

*Background:* 46 U.S.C. Section 51703 (2007) states that, ''the Secretary of Transportation may provide additional training on maritime subjects to supplement other training opportunities and make the training available to the personnel of the merchant mariners of the United States and to individuals preparing for a career in the merchant marine of the United States.'' Also, the U.S. Coast Guard requires a fire-fighting certificate for U.S. merchant marine officers. This collection provides the information necessary for the maritime schools to plan their course offerings and for applicants to complete their certificate requirements.

*Respondents:* U.S. Merchant Marine Seamen, both officers and unlicensed personnel, and other U.S. citizens employed in other areas of waterborne commerce.

*Number of Respondents:* 500.

*Frequency:* Annually.

*Number of Responses:* 500.

*Total Annual Burden:* 25 hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Dated: November 21, 2013.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–28637 Filed 11–27–13; 8:45 am]

BILLING CODE 4910–81–P

## 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, 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 with a 60-day comment period was published on September 16, 2013 [Volume 78, No. 179, Page 57000].

**DATES:** Comments must be submitted on or before December 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Gary R. Toth, Office of Data Acquisitions (NVS–410), Room W53–505, 1200 New Jersey Avenue SE., Washington, DC 20590. The telephone number for Mr. Toth is (202) 366–5378.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* National Automotive Sampling System (NASS).

*OMB Number:* 2127–0021.

*Type of Request:* Continuation.

*Abstract:* The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, Title 1, Sec. 106, 108, and 112). The National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) of the National Highway Traffic Safety Administration investigates high severity crashes. Once a crash has been selected for investigation, researchers locate, visit, measure, and photograph the crash

scene; locate, inspect, and photograph vehicles; conduct a telephone or personal interview with the involved individuals or surrogate; and obtain and record injury information received from various medical data sources. NASS CDS data are used to describe and analyze circumstances, mechanisms, and consequences of high severity motor vehicle crashes in the United States. The collection of interview data aids in this effort.

*Affected Public:* Passenger Motor Vehicle Operators.

*Estimated Total Annual Burden:* 5,605 hours.

*Number of respondents:* 9,450.

**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 Department, including whether the information will have practical utility; the accuracy of the Departments 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.

Issued in Washington, DC, on November 22, 2013.

**Terry T. Shelton,**

*Associate Administrator for National Center for Statistics and Analysis.*

[FR Doc. 2013–28593 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2013–0128]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Request for extension of a currently approved collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before January 28, 2014.

**ADDRESSES:** Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590 by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility; US Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery/Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 1–800–647–5527.

*Instructions:* All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT Building, 1200 New Jersey Avenue SE., West Building Ground Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Mr. Hisham Mohamed, NHTSA, 1200 New Jersey Avenue SE., West Building, Room # W43–437, NVS–131, Washington, DC 20590. Mr. Mohamed's telephone number is (202) 366–0307. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How 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, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

*Title:* 49 CFR part 575.104; Uniform Tire Quality Grading Standard.

*OMB Control Number:* 2127–0519.

*Affected Public:* All passenger car tire manufacturers and brand name owners offering passenger car tires for sale in the United States.

*Form Number:* The collection of this information uses no standard form.

*Abstract:* Part 575 requires tire manufacturers and tire brand owners to submit reports to NHTSA regarding the UTQGS grades of all passenger car tire lines they offer for sale in the United States. This information is used by consumers of passenger car tires to compare tire quality in making their purchase decisions. The information is provided in several different ways to insure that the consumer can readily see and understand the tire grade: (1) The grades are molded into the sidewall of the tire so that they can be reviewed on both the new tire and the old tire that is being replaced; (2) a paper label is affixed to the tread face of the new tire that provides the grade of that particular tire line along with an explanation of

the grading system; (3) tire manufacturers provide dealers with brochures for public distribution listing the grades of all of the tirelines they offer for sale; and (4) NHTSA compiles the grading information of all manufacturers' tirelines into a booklet that is available to the public both in printed form and on the Web site.

*Estimated Annual Burden:* NHTSA estimates that a total of 86,780 man-hours are required to write the brochures, engrave the new passenger car tire molds, and affix the paper labels to the tires. Based on an average hourly rate of $24 per hour for rubber workers in the United States, the cost to the manufacturers is $2,082,670 to perform those items listed above. The largest portion of the cost burden imposed by the UTQGS program arises from the testing necessary to determine the grades that should be assigned to the tires. An average of 125 convoys, driven 7,200 miles each, consisting of four vehicles and four drivers, are run each year for treadwear testing. NHTSA estimates it cost $0.60 per vehicle mile including salaries, overhead and reports. This brings the annual treadwear testing cost to $2,520,000. For the traction testing, it is estimated that 1,750 tires are tested annually with an estimated cost of $45,000 for use of the government test facility. Using a factor of 3.5 times to cover salary and overhead of test contractors, the estimated cost of traction testing is $157,500. A separate temperature grade testing for tires is required, since the test is no longer an extension of the high speed performance test of 49 CFR Part 571.109, which was previously required for safety certification. Part 571.109 is replaced by Part 571.139, which has different test speeds. For the temperature testing, it is estimated that 1,715 tires are tested annually with an estimated average cost per test of $454. Therefore, the estimated UTQGS temperature annual testing is $778,610. Thus, the total estimated cost for UTQGS testing is $3,456,100. The cost of printing the tread labels is approximately $28,500,000 and the estimate for printing brochures is at $3,163,500. This yields a total annual financial burden of approximately $35,120,000 (approximately $35.1 million) on the tire manufacturers.

*Estimated Annual Burden to the Government:* The estimated annual cost of UTQGS to the Federal government is $1,278,000. The cost consists of approximately $152,000 for data management, $730,000 for enforcement testing, and approximately $396,000 for general administration of the program.

*Number of Respondents:* There are approximately 160 individual tire brands sold in the United States. The actual number of respondents is much less than 160 due to company acquisitions, mergers, and in most cases, the manufacturer will report for the various individual brand names for which they produce tires. The actual number of respondents is approximately 45.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2013–28591 Filed 11–27–13; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA—2013–0131]**

### Amendments to Highway Safety Program Guidelines

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Revisions to highway safety program guidelines.

**SUMMARY:** Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs.

This notice revises five of the existing guidelines and adds a new one to reflect program methodologies and approaches that have proven to be successful and are based on sound science and program administration. The revised guidelines are Guideline No. 1 Periodic Motor Vehicle Inspection, Guideline No. 2 Motor Vehicle Registration, Guideline No. 6 Codes and Laws, Guideline No. 16 Management of Highway Incidents (formerly Debris Hazard Control and Cleanup), and Guideline No. 18 Motor Vehicle Crash Investigation and Incident Reporting (formerly Accident Investigation and Reporting). The new guideline is No. 13 Older Driver Safety.

**DATES:** The revised guidelines become effective as of the date of publication of this document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Jeff Michael, Associate Administrator, Office of Research and Program Development, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: 202–366–1755; Fax: 202–366–7721.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. As the highway safety environment changes, it is necessary for NHTSA to update the guidelines to provide current information on effective program content for States to use in developing and assessing their traffic safety programs. In a Notice published in the **Federal Register** on June 20, 2012 (77 FR 37093), the agency requested comments on the proposed revisions to the following guidelines: Guideline No. 1 Periodic Motor Vehicle Inspection, Guideline No. 2 Motor Vehicle Registration, Guideline No. 6 Codes and Laws, Guideline No. 16 Management of Highway Incidents (formerly Debris Hazard Control and Cleanup), and Guideline No. 18 Motor Vehicle Crash Investigation and Incident Reporting (formerly Accident Investigation and Reporting). A new guideline, No. 13 Older Driver Safety, was also developed to help States develop plans to address the particular needs of older drivers and address the emerging challenges from the increasing population of older drivers in their States. Because of the unique issues related to older driver safety, this guideline also includes recommendations related to Medical Providers and Social Services Providers. Overall, these revisions and additions will provide up-to-date and current guidance to States. NHTSA will update the guidelines periodically to address new issues and to emphasize program methodology and approaches that have proven to be effective in these program areas.

Each of the revised guidelines reflects the best available science and the real-world experience of NHTSA and the States in developing and managing traffic safety program content. The guidelines offer direction to States in formulating their highway safety plans for highway safety efforts supported with Section 402 grant funds as well as safety activities funded from other sources. The guidelines provide a

framework for developing a balanced highway safety program and serve as a tool with which States can assess the effectiveness of their own programs. NHTSA encourages States to use these guidelines and build upon them to optimize the effectiveness of highway safety programs conducted at the State and local levels.

These guidelines emphasize areas of nationwide concern and highlight effective countermeasures. As each guideline is updated or created, it will include a date representing the date of its revision or development. All the highway safety guidelines are available on the NHTSA Web site at *http://www.nhtsa.gov/nhtsa/whatsup/tea21/tea21programs/pages/*.

Further, the intended use of these guidelines is identical to the existing guidelines—to provide broad guidance to the States on best practices in each highway safety program area. Countermeasures are more thoroughly discussed in the National Cooperative Highway Research Program (NCHRP) series 500 guidance documents and in the NHTSA publication *Countermeasures that Work;* these tools provide detail to fill in the framework. All of these documents, along with additional behavioral research conducted by non-Federal sources, add to the robustness of available highway safety literature. NHTSA recognizes that individual State needs and programs differ and acknowledges that the weight placed on certain guidelines or individual recommendations in the guidelines may vary from State to State.

## II. Comments

The agency received comments in response to the notice from Advocates for Highway & Auto Safety (Advocates), the American Automobile Association (AAA), American Traffic Safety Services Association (ATSSA), Automotive Aftermarket Industry Association (AAIA), Automotive Education & Policy Institute (AEPI), California Chiefs of Police Traffic Safety Committee (CPCA), California Highway Patrol (CHP), Commercial Vehicle Safety Alliance (CVSA), the Governors Highway Safety Association (GHSA), Pat Hoag of R&R Trucking, Motor & Equipment Manufacturers Association (MEMA), Montana Department of Transportation (MDT), National Automobile Dealers Association (NADA), Michael Paris of the NY State Office for the Aging (NYSOA), National Transportation Safety Board (NTSB), Rubber Manufacturers Association/Tire Industry Association (RMA/TIA), Carl Soderstrom of the Maryland Motor Vehicle Administration (MD MVA), James Stowe, and the University of North Carolina Highway Safety Research Center (UNC).

The majority of guideline-specific comments received focused on Guidelines No. 1 Periodic Motor Vehicle Inspection and No. 13 Older Driver Safety. The agency also received three comments related to Guideline No. 2 Motor Vehicle Registration, two comments related to Guideline No. 6 Codes and Laws, three comments related to Guideline No. 16 Management of Highway Incidents (formerly Debris Hazard Control and Cleanup), and four comments related to Guideline No. 18 Motor Vehicle Crash Investigation and Incident Reporting (formerly Accident Investigation and Reporting).

### *A. Comments in General*

A number of commenters had suggestions for improving the guidelines while a few expressed concern for some of the revisions that were made. GHSA commended the agency for its efforts to update several guidelines and develop the new Older Driver Safety Guideline. However GHSA also suggested that NHTSA should work with Congressional authorizing committees to revise the language on the national guidelines in future authorizations to eliminate guidelines in areas which no longer receive funds through the Section 402 grant program. That comment goes beyond the scope of this **Federal Register** Notice, and did not impact these guidelines.

The agency also received a number of other comments outside the scope of the proposed revisions to the highway safety program guidelines. Some of these comments related to topics that go beyond NHTSA's jurisdiction, such as regulating vehicle repair and automotive technicians. Some comments related to other NHTSA safety programs, but that were not directly addressed in the original **Federal Register** Notice. Because these comments do not fall within the subject area of the revised guidelines, the agency has not addressed them in this action. Additional comments related to particular highway safety program guidelines are discussed below in II(B) under the appropriate heading.

### *B. Comments Regarding Guideline No. 1—Periodic Motor Vehicle Inspection (PMVI)*

A number of commenters, including Advocates, AAIA, MEMA, and RMA/TIA believe PMVI should be performed annually and disagree with NHTSA's recommendation for *periodic* inspection. They expressed concern that the revised language could impact the effectiveness of the guideline if States moved from a required annual inspection to longer intervals between inspections. NHTSA disagrees and believes each State should determine the optimal time between inspections based on evidence of the effectiveness of that State's particular program. Nothing in the revised guideline would prevent a State from maintaining an annual inspection process. NHTSA believes the research on the general effectiveness of PMVI is inconclusive, and does not warrant a more prescriptive approach. Advocates and MEMA cited a 2009 Pennsylvania Department of Transportation report and a Missouri State study that found that PMVI programs can provide a safety benefit. But a major study from Norway (Fosser 1992) found no benefit. This study involved 204,000 vehicles that were randomly assigned to three different experimental conditions: 46,000 cars were inspected annually during a period of three years; 46,000 cars were inspected once during three years; and 112,000 cars were not inspected at all. The number of crashes was recorded for all vehicles over a period of four years. There was no discernible difference in crash outcomes between the groups, however the report did find that the technical condition of inspected vehicles (i.e., head lights, tail lights, tires) improved compared to those not inspected. A recent follow-up study in Norway (Christensen 2007) confirmed these results: inspections are effective in improving the technical or physical condition of vehicles, but found no evidence that periodic inspections had a measurable effect on reducing crash rates. Given these significant differences between various studies, there is not enough evidence at this time to make a more definitive assessment on the effectiveness of PMVI in reducing crashes.

There is also no consensus on how often PMVI should be performed to be the most beneficial and cost effective. Many other countries allow periods longer than one year between required inspections yet do not seem to suffer any negative safety effects. For example, in the European Union, many countries follow a ''4–2–2'' standard (96/96/EC Directive on Roadworthiness and Inspections). According to this schedule, all passenger vehicles are required to be inspected every second year, starting the fourth year after the car was first registered. A few European countries require more frequent inspections for passenger vehicles, such as every two to three years. Some countries also add additional

requirements for older vehicles, such as annual inspections for vehicles over 8 years old.

It's also important to point out that there can be different schedules for different types of vehicles. While passenger vehicles may not be required to have annual inspections, States may require other vehicles, such as large trucks, buses or other commercial vehicles, to have one.

In addition to the age of the vehicle as a relevant factor of vehicle inspection, another issue that comes up frequently in the research as an issue on PMVI is tire maintenance. In a NHTSA study published in 2008, tire/wheel failure was found to be the leading factor where the critical reason for the crash was attributed to the vehicle (Motor Vehicle Crash Causation Study 2008). Tire/wheel deficiency was cited in 4.9% of these crashes. The next most common vehicle-related factor was braking systems at 0.6% of crashes. Maintaining proper tire pressure and adequate braking capability are important parts of keeping vehicles safe. As a result of tire-related safety concerns, NHTSA established two new Federal Motor Vehicle Safety Standards: FMVSS No. 138 requires a tire pressure monitoring system (TPMS) on all new light vehicles and FMVSS No. 139 updated the performance requirements for passenger car and light-truck radial tires. Both of these rules became effective on September 1, 2007. The effects of these rules are expected to continue to increase with time as market penetration increases. They also reduce any potential benefit of a PMVI assessment of tires. Moreover, NHTSA recommends that vehicle owners should inspect their tires on a monthly basis for wear and tear as well as underinflation, rather than rely on a PMVI check-up once every year or two.

Advocates, AEPI, MEMA and NADA expressed concern with a best practices model for implementing PMVI programs, and about the need for updating 49 CFR 570, which establish criteria for the inspection of motor vehicles by State inspection systems. NHTSA agrees with these comments, and is currently in process of updating 49 CFR 570. The agency expects to have the update completed in 2013.

AEPI also expressed concern over the influence that auto insurance companies may have in regard to the selection of parts and methods used in the repair of motor vehicles. Using ''remanufactured aluminum alloy wheels,'' as an example, AEIP noted that decisions on the type of equipment used in repairs as well as the installation process may not meet the original vehicle specifications, and could lead to additional safety risks. This comment falls outside the scope of NHTSA's PMVI guideline. State-level agencies that have oversight over consumer product safety may be better able to address this issue.

Advocates also noted that the recently enacted Moving Ahead for Progress in the 21st Century (MAP–21) highway transportation authorization included a provision regarding greater oversight for State annual inspection programs for commercial motor vehicles, and that NHTSA should make similar efforts to encourage States in the area of periodic safety inspections for registered vehicles. The MAP–21 provision requires that, ''Not later than 3 years after the date of enactment of this Act, the Secretary of Transportation shall complete a rulemaking proceeding to consider requiring States to establish a program for annual inspections of commercial motor vehicles.'' The Federal Motor Carrier Safety Administration (FMCSA), an agency of the U.S. DOT, will issue a rulemaking notice on this topic within the required time frame. Inspection programs for commercial vehicles play an important role in keeping these vehicles safe on the road. But not all safety regulations that apply to commercial motor vehicles have the same potential safety benefit for passenger vehicles due to differences in vehicle design and how they are utilized. For example, inspections for commercial vehicles also include checking commercial driver licensing and hours of service records. Thus, these differences between commercial vehicles, such as motorcoaches, and passenger vehicles are significant enough to merit independent assessments of the costs and benefits of inspection programs.

CVSA recognized that PMVI programs focus mainly on light duty passenger vehicles, although the guideline specifically applies to ''all registered vehicles.'' Their recommendation is to include all medium- and heavy-duty motor vehicles (including commercial and non-commercial vehicles.) They also acknowledge the value of roadside inspections but believe those inspections are not on par with annual or periodic motor vehicle inspections. CVSA recommends NHTSA establish three separate and distinct types of inspections specifically for commercial motor vehicles to include annual/periodic and preventative maintenance requirements; driver trip requirements; and, roadside inspection programs. FMCSA provides guidance to States on commercial vehicle inspection programs; therefore this comment falls outside the scope of this guideline. However, these comments will be forwarded to FMCSA for consideration in their review of the annual inspection process of commercial motor vehicles.

RMA/TIA supports stringent tire inspection and suggested that the federal government should explore whether incentive grants could be made to States with programs or consider withholding federal highway funds from States without inspection programs to spur action. The agency disagrees with this comment. Tires are already addressed in 49 CFR Part 570.9 which provides the criteria for inspections, as noted earlier, and given the new TPMS requirement of FMVSS No. 138, additional actions are not recommended at this time.

Finally, the MDT believes the evaluation of this program would add to the current workload of the State Highway Traffic Safety Office (SHTSO) and would cause financial hardship. While different parts of the program are housed in different State agencies, it is not an undue hardship for those agencies to work together within the State to obtain the available information necessary to conduct the evaluation using whatever data sources are available. Overall, no revisions were made to this guideline in response to the comments.

*C. Comments Regarding Guideline No. 2—Motor Vehicle Registration*

NHTSA received three specific comments regarding this guideline. MDT commented that the guideline would require that MDT's State Highway Safety Traffic Office be provided with an evaluation summary of this program. NHTSA agrees with this observation. NADA offered a suggestion that motor vehicle registration programs notify registered owners of any outstanding and remedied safety recall and/or condition vehicle re-registration on recall remedy performance. NHTSA appreciates recommendations on how to expand the reach of recall information, and likes the general concept of enlisting States' help in flagging unremedied recalls for consumers. However vehicle registration programs vary by State and some registrations are valid for multiple years. If a recall was issued shortly after vehicle registration, multiple years may elapse before the next required registration and receipt of recall information under their proposed scenario, making that late received information less timely. NHTSA also does not favor recommending that States make the recall remedy a condition of registration and/or completing respective inspections, because such action would overlap with

issues of State law and enforcement. Up-to-date information is available at NHTSA's *www.safercar.gov* at no cost to the consumer. Recall remedy information is also available for consumers on vehicle history report Web sites for a nominal fee. To retool existing State vehicle registration systems to provide this information would place an undue financial burden on the States.

The CHP suggested adding the expiration date, motive power, number of axles, unladen, gross or combined gross weight, branding (e.g. lemon law, prior police, prior taxi, warranty return, grey market), vehicle model, vehicle color and vehicle owner's contact information. Again, NHTSA is concerned that the additional burden on State DMVs would outweigh the safety benefit of gathering the requested additional information. It may be feasible that individual States wanting such information make that a part of their policy and administrative guidance.

*D. Comments Regarding Guideline No. 6—Codes and Laws*

Two comments were received. GHSA remarked that it is unnecessary for State Highway Safety Offices (SHSOs) to maintain a list of codes/laws and suggested elimination in future reauthorizations. NHTSA disagrees since it is necessary for SHSOs to be aware of codes and laws as they develop and evaluate safety programs. It serves the public benefit by having this information. Since the Governors Highway Safety Representative is designated by the Governor to maintain the highway safety program and administer the grant programs, they must be aware of how the individual State codes and laws comply (or not) with the grant programs. The MDT commented that they currently have an established process to address proposed changes. Requiring a SHSO to track information adds another burden to MDT's State safety staff and is a duplication of efforts by two different State agencies. NHTSA recognizes that this may be a potential burden, and allows existing systems of tracking to remain the same as long as they can continue to carry out the intent of this guideline.

*E. Comments Regarding Guideline No. 13—Older Driver Safety*

NHTSA received comments in response to the notice from several organizations or associations: AAA, Advocates for Highway and Auto Safety (Advocates), American Traffic Safety Services Association (ATSSA), California Police Chiefs Association (CPCA), Governors Highway Safety Association (GHSA), Maryland Motor Vehicle Administration (MD MVA), Montana Department of Transportation (MDT) National Transportation Safety Board (NTSB), New York State Office for the Aging (NYSOA), University of North Carolina (UNC), as well as from one individual.

General

AAA offered general support for the guidelines and provided two suggestions on the implementation of the guidelines. NHTSA agrees that implementation guidance is valuable, but determined that implementation guidance should not be included within the guideline. ATSSA generally supported the guideline, with emphasis on those related to roadway safety. Advocates recommended inserting language into the guideline to differentiate between the needs of urban and rural seniors. The agency recognizes that older people in rural and urban areas have different needs for transportation, and different challenges related to driving safety. However, because the guidelines are not meant to be prescriptive, this recommendation was not incorporated into the guidance. MD MVA was generally supportive, and provided research citations to support the aims of the guidance. MDT expressed concern that this guideline represents an unfunded mandate, and that States would be obligated to use highway safety funds to try to comply with the guidance. NHTSA disagrees with this comment. In FY 2012, the States received over $500 million to conduct highway safety programs. Congress included older driver safety among the topics that are allowed under the grant programs. If there is a documented and identified need, States may utilize this funding to develop and implement programs covered under the Highway Safety Guidelines.

NTSB was generally supportive, and recommended modification of the Model Minimum Uniform Crash Criteria (MMUCC) to include fields related to medical impairments as part of this guideline. Because this suggestion is beyond the scope of the highway safety program guidelines, no changes were made to the guidelines. One commenter expressed concern that vehicle design and collaboration with vehicle manufacturers was not included in the guidance. Improving vehicle design to enhance the safety of frail and fragile occupants is an important part of NHTSA's mission. However, this does not fall under the mission or authority of State highway safety offices, the primary audience for these guidelines, and therefore was not incorporated into the guideline.

I. Program Management

The agency received several comments concerning the Program Management section. ATSSA supported the section as written. NYSOA recommended that proven effectiveness of programs be considered and included within the program management structure. The agency agrees in the value of proven programs, but also recognizes that innovation happens at the State and local levels, and would not want to set limits on program development within this framework that may hinder innovation. Consequently, the agency made no changes to the guideline in response to this comment. However, NHTSA also encourages States to utilize evidence-based programs whenever possible, and recommends *Countermeasures That Work* (DOT HS 811 727) as a resource and guide. GHSA recommended that State DOT road and transit organizations be specifically identified as organizations with which highway safety offices should collaborate. The agency agreed that this was an important addition, and changed the guideline to reflect this recommendation.

II. Roadway Design for Older Driver Safety

Both ATSSA and NTSB supported this section as written. NYSOA suggested that the notion that roadways should be designed to specifically accommodate older drivers is flawed, and ignores the needs of all motorists. Because there is a wide body of research that shows how designs that help older drivers—such as larger traffic signs and dedicated left-turn lanes—also help other drivers, the guideline remains unchanged in response to this comment. GHSA expressed concern about the phrasing of portions of this section, specifically that it might give the incorrect expectation that highway funds could be used for program activities. The guideline language was amended to be more explicit in response to this comment.

III. Driver Licensing

One commenter expressed concern that a focus on older drivers in a licensing setting can be viewed as discriminatory, and thus may be reluctant to implement some of the guidance related to driver licensing. However, in elevating each recommendation to be included in the guideline, NHTSA assessed supporting

and dissenting research. The resulting guidance provides flexibility—and the expectation—for individualized assessment of capabilities. It also supports the ability of States to exercise their responsibility to ensure public safety by looking more closely at a subset of the driving population who are at increased risk of crashing.

The bulk of the comments received were related to this section of the guideline. For clarity, the comments are grouped first by major element, then by general suggestions. The first topic that drew comments was the recommendation for in-person renewal. One individual and NYSOA disagreed with the recommendation that States require in-person renewal for drivers over a specified age. The individual was concerned with the potential for unintended negative consequences if more barriers to license renewal were enacted, such as injuries sustained in other modes of transport. NYSOA suggested that in-person renewal should be based on individual crash records, and that using age as a basis for actions by the driver licensing authority was ''ageist.''

In recommending in-person renewal as part of the guideline, NHTSA considered all of these concerns. Research on in-person renewal requirements and other related policies has shown that these approaches have safety benefits. Using age as a determinant for requiring in-person renewal is reasonable because of the high correlation between age and the functional deficits that are related to increased crashes. Consequently, the guideline was not changed in response to these comments. MD MVA suggested the addition of language related to data analysis to support a State's decision on an in-person renewal policy, and provided an additional citation on relevant research (Soderstrom 2008). This recommendation was incorporated into the guideline.

The second topic that drew comments was the provision of immunity to medical providers who provide good-faith referrals to the driver licensing authority. MD MVA recommended the inclusion of the word ''all'' to the sentence on medical providers who make good-faith referrals, and NTSB suggested that medical providers in the emergency room and emergency medical technicians should also be explicitly included. Further, NTSB suggested the inclusion of criminal and administrative immunity (in addition to civil liability immunity) because the model law on the topic included those immunities. NHTSA agrees with these comments, and changes were made to the guidelines to reflect these recommendations.

The CPCA, NTSB, UNC and one individual suggested that other people also should be provided immunity for providing good-faith referrals. Because there is inadequate research to show a need for such immunity for audiences other than medical providers, NHTSA cannot support their explicit inclusion in the guidelines at this time. NYSOA recommended relocating the guidance on medical provider immunity to the section on medical providers. The action that necessitates immunity is the provision of potentially confidential information to the driver licensing authority. Because of this, the guideline was not changed to reflect that comment.

The CPCA and UNC recommended a broader discussion of restrictions to driver licenses, such as graduated licenses for older drivers. These comments were incorporated into the guideline.

The remaining comments on this section covered a range of topics. An individual expressed concern over whether the NHTSA and American Association of Motor Vehicle Administrators (AAMVA) policies were the best guidance available, and suggested consideration of American Medical Association (AMA) guidance for physicians. NHTSA sponsored the development of both sets of guidance. Because of this coordination, and the fact that AMA was also involved in the development of the AAMVA guidance, these documents complement each other and this suggestion is not incorporated into the guideline. The commenter also recommended that driver licensing data be made generally available to researchers. Because of the potential burden to State agencies, this was not included in the guidance; however, that would not preclude a State from making data available to researchers if they wished to do so. Finally, the commenter suggested that guidance related to DMVs communicating with medical providers was misplaced, and would be more appropriately located in the section of the guideline on medical providers. Because this would undermine the intent of the guideline in this section—to identify actions that DMVs should take—this change was not made. The CPCA suggested that States should set up safety-check locations for older drivers to determine whether it is still safe for them to drive. NHTSA is not aware of feasibility, reliability, or effectiveness research on models like that. The agency will need to conduct research on such programs before including them in the guideline. This recommendation was not incorporated into the guideline. MD MVA suggested that non-driver identification cards should be provided at low-cost or no charge if possible. Research has suggested that such an action would eliminate a potential barrier to driving cessation. This comment was incorporated into this section of the guideline.

IV. Medical Providers

One individual suggested that NHTSA specify the types of medical providers who should receive education related to safe driving among medically at-risk patients. Because any medical provider who interacts with patients has the potential to identify functional deficits and risk factors related to driving, it would not be beneficial from a public health perspective to limit the types of medical providers that are eligible for education on the topic. Consequently, the guideline was not changed to reflect this recommendation.

V. Law Enforcement

Two comments were related to this section of the guideline. NYSOA expressed concern over law enforcement officers' ability to identify medical risk. NHTSA agrees with this concern. Because of this, the agency has developed training tools related to unsafe driving and appropriate interactions with potentially-at-risk drivers. However, no changes were made to the guideline in response to this comment. Also, MD MVA provided citations for research supporting the value and effectiveness of law enforcement referrals to driver licensing authorities (Meuser, Carr & Ulfarsson, 2009; and Soderstrom, Scottino, Burch et al., 2010).

VI. Social and Aging Services Providers

There were two comments related to this section of the guideline. One person recommended that State Highway Safety Offices collaborate with localities on human services transportation. NYSOA recommended the explicit inclusion of strategies from the document ''Countermeasures that Work'' in the guidance. Both of these comments were incorporated into this section of the guideline.

VII. Communication Program

Two comments were submitted related to this section of the guideline. NYSOA expressed concern that there was not a suggestion that communities facilitate driver transitioning. NHTSA agrees with this comment, and believes it is addressed through the changes

made to the section on Social and Aging Services Providers. NTSB suggested that families and friends should be explicitly included in communications and education efforts. NHTSA agrees with this. This suggestion was incorporated into Section VI of the guideline.

VIII. Program Evaluation and Data

There were two comments submitted on this section of the guideline. An individual recommended an emphasis on outcome evaluation, crash reduction in particular, rather than process evaluation and suggested that the guidelines emphasize additional data collection. NHTSA agrees that outcome evaluation is very important, but it is also important to collect a range of data—both outcome and process—to determine the effectiveness of a program. Further, the agency determined that process evaluation is a critical element within outcome evaluation in that one must determine the extent of program activities to determine whether they could have influenced the outcome. The agency did not change the guideline in response to this comment. NYSOA recommended that evaluation of educational programs should be specified. The agency agreed with this, and adjusted the guideline to reflect that recommendation.

*F. Comments Regarding Guideline No. 16—Management of Highway Incidents (formerly Debris Hazard Control and Cleanup)*

NHTSA received three comments on this guideline. CHP commented that Section I.B.2 deals with procedures to ''certify'' all rescue and salvage responders and equipment and the burden that would place on the State to develop a formal certification program. MDT also questioned the certification and standards. NHTSA agrees with these concerns. References to the certification process were removed from the guideline. GHSA pointed out that a prior Section 402 earmark for this program was eliminated years ago and this guideline creates expectations that Section 402 funds should now be used. They suggest elimination of this guideline. MDT believes the guideline places a burden on the State and all of the guidelines and requirements are outside the control and scope of the SHSO, making it difficult to verify implementation and evaluate and monitor the programs. NHTSA disagrees with GHSA and MDT on these issues. The guideline provides a formal structure used by the States to improve highway safety and serves as a public benefit. States have the flexibility to utilize Section 402 funds based on their greatest needs and where the funding would have the greatest impact.

*G. Comments Regarding Guideline No. 18—Motor Vehicle Crash Investigation and Incident Reporting (formerly Accident Investigation and Reporting)*

Four comments were received on this guideline. AAIA states the proposed guideline does not reflect the detailed depth of reporting necessary to aggregate data of real value. NHTSA disagrees with this comment since use of the Model Minimum Uniform Crash Criteria (MMUCC) data set provides the needed information for relevant crash data collection and analysis. They go on to comment that the MMUCC—Vehicle Data Elements contains the data set that would enable the aggregation of information relevant to understanding the value of PMVSI programs and should be the standard for crash investigation. NHTSA agrees with this observation and recognizes the need for uniformity and compatibility of data collected in Section A.4.a of the guideline: *Use of uniform definitions and classifications as denoted in the Model Minimum Uniform Crash Criteria Guideline.*

The AEPI urges NHTSA to include professional collision repairers in the listing of recommended representatives of crash investigation teams and does not support law enforcement (untrained) to estimate the value of damage. NHTSA disagrees with this recommendation. While the police crash report is useful to provide an estimate of the damage, a detailed analysis of damage is generally conducted at a repair facility by qualified technicians. There is no apparent value for an onsite collision repairer at crash scenes and investigations. The AEPI also commented that NHTSA does not require obtaining information pertaining to prior motor vehicle collisions and/or repairs to a vehicle in the data collected by the states during current crash investigations. It is their opinion that comparison of the crash data and prior claim information could identify methods of repair and/or parts used in the repair of most vehicles that are causing or contributing to motor vehicle crashes, injuries and deaths. NHTSA disagrees with this suggestion, since it is not within the scope of NHTSA's mission nor this guideline.

R&R Trucking commented that the lack of a standard accident report and the requirement to complete the accident report properly has a negative impact on carriers and drivers. NHTSA disagrees with this comment since each State has a uniform crash report that is adapted to their specific needs. Properly filling out a State uniform crash is the responsibility of the individual States.

*References:*

Christensen, P., Elvik, R. Effects on accidents of periodic motor vehicle inspection in Norway. *Accid. Anal. Prev.,* 39 (2007) pp. 47–52. Accessed at *http://dx.doi.org/10.1016/j.bbr.2011.03.031*

Fosser, S. (1992). An Experimental Evaluation of the Effects of Period Motor Vehicle Inspection on Accident Rates. *Accid. Anal. Prev,* Vol. 24, No. 6 pp. 599–612.

Meuser TM, Carr DB, Ulfarsson GF: Motor-vehicle crash history and licensing outcomes for older drivers reported as medically impaired in Missouri. *Accid. Anal. Prev* 2009;41:246–252.

NHTSA (2008) National Motor Vehicle Crash Causation Survey Report to Congress. DOT HS 811 059. Washington, DC National Highway Traffic Safety Administration.

Soderstrom CA & Joyce JJ: Medical review of fitness to drive in older drivers: the Maryland Experience. *Traffic Injury Prevention* 2008;9:342–349.

Soderstrom, Scottino, Burch et al. 2010. Pursuit of Licensure by Senior Drivers Referred by Police to a State Licensing Agency's Medical Advisory Board. *Ann Adv Automot Med.* 2010;54:351–8.

Vlahos, N., Lawton S., Komanduri A., Popuri Y., and Gaines, D. 2009. Pennsylvania's Vehicle Safety Inspection Program Effectiveness Study Final Report. PA Department of Transportation Contract # 355101.

The guidelines published today also will appear on NHTSA's Web site in the Highway Safety Grant Management Manual in the near future. Guideline Nos. 1, 2, 6, 13, 16, and 18 are set forth below. The remaining guidelines are not addressed by today's action and remain unchanged.

**Highway Safety Program Guideline No. 1**

*Periodic Motor Vehicle Inspection*

Each State should have a program for periodic inspection of all registered vehicles to reduce the number of vehicles with existing or potential conditions that may contribute to crashes or increase the severity of crashes that do occur, and should require the owner to correct such conditions.

I. An inspection program would provide, at a minimum, that:

A. Every vehicle registered in the State is inspected at the time of initial registration and on a periodic basis thereafter as determined by the State based on evidence of the effectiveness of inspection programs.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, subsystems, and components having

substantial relation to safe vehicle performance.

D. Each inspection station maintains records in a form specified by the State, which includes at least the following information:

- Class of vehicle.
- Date of inspection.
- Make of vehicle.
- Model year.
- Vehicle identification number.
- Defects by category.
- Identification of inspector.
- Mileage or odometer reading.

E. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

**Highway Safety Program Guideline No. 2**

*Motor Vehicle Registration*

Each State should have a motor vehicle registration program.

I. A model registration program would require that every vehicle operated on public highways is registered and that the following information is readily available for each vehicle:

- Make.
- Model year.
- Vehicle Identification Number.
- Type of body.
- License plate number.
- Name of current owner.
- Current address of owner.
- Registered gross laden weight of every commercial vehicle.

II. Each program should have a records system that provides at least the following services:

- Rapid entry of new data into the records or data system.
- Controls to eliminate unnecessary or unreasonable delay in obtaining data.
- Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.
- Data available for statistical compilation as needed by authorized sources.
- Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

**Highway Safety Program Guideline No. 6**

*Codes and Laws*

Each State should strive to achieve uniformity of traffic codes and laws throughout the State. The State Highway Safety Office should maintain a list of all relevant traffic codes and laws, and serve as a resource to State and local jurisdictions on any proposed changes.

Each State should utilize all available sources, such as Federal or State legislative databases or Web sites, to ensure that its traffic codes and laws reflect the most current evidence-based and peer-reviewed research.

**Highway Safety Program Guideline No. 13**

*Older Driver Safety*

Each State, in cooperation with its political subdivisions, tribal governments and other stakeholders, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities, and injuries on public roads. The highway safety program should include a comprehensive older driver safety program that aims to reduce older driver crashes, fatalities, and injuries. To maximize benefits, each State older driver safety program should address driver licensing and medical review of at-risk drivers, medical and law enforcement education, roadway design, and collaboration with social services and transportation services providers. This guideline recommends the key components of a State older driver safety program, and criteria that the program components should meet.

In this guideline, there are recommendations regarding specific partner groups. However, it is likely that there are other State, local, and non-government organizations that could help in achieving goals related to older driver safety because their missions are related to the safe mobility of older people. When older people can no longer drive safely, their mobility needs are often met by alternative means such as ride programs or transit services. Federal highway safety funds can be used for highway safety purposes—which might include programs to facilitate older persons' decisions about when to stop driving by increasing awareness of other transportation options. However, NHTSA funds cannot be used to provide services—such as transit services—whose primary purpose is not to improve highway safety. For details on recommended practices, see *Countermeasures that Work* at (*www.ghsa.org/html/publications/countermeasures.html*).

I. Program Management

Each State should have centralized data analysis and program planning, implementation, and coordination to identify the nature and extent of its older driver safety problems, to establish goals and objectives for the State's older driver safety program and to implement projects to reach the goals and objectives. State older driver programs should:

- Designate a lead organization for older driver safety;
- Develop resources;
- Collect and analyze data on older driver crashes, injuries, and fatalities;
- Identify and prioritize the State's older driver safety problems;
- Encourage and facilitate regular collaboration among agencies and organizations responsible for or impacted by older driver safety issues (e.g., Department of Transportation road and transit entities, State Unit on Aging, State Injury Prevention Director, State Office of EMS, Non-Governmental Organizations related to aging or aging-related diseases);
- Develop programs and specific projects to address identified problems;
- Coordinate older driver safety projects with other highway safety projects;
- Increase awareness of older driver transportation options, such as ride programs or transit services;
- Integrate older driver safety into the State strategic highway safety plans and other related activities, including impaired driving, occupant protection, and especially driver licensing programs; and
- Routinely evaluate older driver safety programs and services and use the results in program planning.

II. Roadway Design for Older Driver Safety

Traffic engineering and roadway design can challenge or ease a driver's mobility in any community. It is possible and desirable to accommodate normal aging through the application of design, operational, and traffic engineering countermeasures. The needs of older road users must be considered in new construction, as well as in spot improvements, to keep older drivers safe. The Federal Highway Administration (FHWA) has developed guidelines (*http://safety.fhwa.dot.gov/older_users/*) for accommodating older road users, and the guidelines need to be implemented on State and local roadways. Each State also has a process by which it seeks user input for its

Strategic Highway Safety Plans. It is reasonable for State DOTs to collaborate and seek partnerships and planning/funding through other sources, such as the Highway Safety Plans, which come from the Highway Safety Office, or from the State Units on Aging, though it should be noted that there are strict limits on how funding from these sources may be used.

State DOTs should:

- Consider Older Driver safety as an emphasis area in the Strategic Highway Safety Plan (SHSP) if data analysis identifies this as an area of concern;
- Develop and implement a plan for deploying the guidelines and recommendations to accommodate older drivers and pedestrians; and
- Develop and implement a communications and educational plan for assisting local entities in the deployment of the guidelines and recommendations to accommodate older drivers and pedestrians.

III. Driver Licensing

Driver licensing is a critical element in the oversight of public safety as it relates to older drivers. The driver licensing authority (DMV) can legally restrict or suspend an individual's license, and for that reason, it is the primary audience for these recommendations. It is important that DMVs continue to make individualized determinations of fitness to drive—that is, determinations based on the review and assessment of individuals' capabilities to safely operate vehicles. However, it is reasonable for States to use age as a trigger for additional screening in execution of public safety roles and obligations. There are three areas within driver licensing that are important to driving safety: policies; practices; and, communications.

Recommended driver licensing policies that each State should implement to address older driver safety are:

- In-person renewal should be required of individual drivers over a specified age if the State determines through analysis of crash records that there is a problem with older driver crashes;
- Medical review policies should align with the Driver Fitness Medical Guidelines (Driver Fitness Medical Guidelines) published by NHTSA and the American Association of Motor Vehicle Administrators (AAMVA); and
- All medical and emergency medical service providers who provide a referral regarding a driver in good faith to the driver licensing authority should be provided immunity from civil, criminal, and administrative liability.

Recommended driver licensing practices that each State should implement to address older driver safety are:

- Consider licensing restrictions as a means of limiting the risks presented by individual drivers while allowing for the greatest autonomy possible;
- Establish a Medical Advisory Board (MAB), consisting of a range of medical professionals, to provide policy guidance to the driver licensing agency to implement;
- The medical review function of the DMV should include staff with medical expertise in the review of medically-referred drivers;
- The DMV should regularly conduct analyses and evaluation of the referrals that come through the medical review system to determine whether procedures are in place to appropriately detect and regulate at-risk drivers;
- Train DMV staff, including counter-staff, in the identification of medically at-risk drivers and the referral of those drivers for medical review; and
- Provide a simple, fast, and if possible, very low cost or free way for individuals to convert their driver licenses to identification cards.

To be effective in identification of medically at-risk drivers, the State should implement a communications program, through the DMV to:

- Make medical referral information and forms easy to find on the DMV Web site;
- Provide outreach to and training for medical providers (e.g., physicians, nurses, etc.) in making referrals of medically at-risk drivers and in finding resources on functional abilities and driving;
- Provide outreach to and training for law enforcement in successfully identifying medically at-risk drivers and in making referrals of medically at-risk drivers to the DMV; and
- Provide information on transportation options and community resources to drivers who are required to submit to medical review of their licenses.

IV. Medical Providers

State older driver safety programs rely on the identification of medically at-risk drivers by their medical providers, with the aim of limiting the impact of changes in functional abilities on the safe operation of a motor vehicle. Medical providers should know how to counsel the at-risk driver, and when confronted by a driver who refuses to heed advice to stop driving, to make a referral to the driver licensing authority. To facilitate this process, States should:

- Establish and implement a communications plan for reaching medical providers;
- Disseminate educational materials for medical providers. Providers should include physicians, nurses, occupational therapists, and other medical professionals who treat or deal with older people and/or their families;
- Facilitate the provision of Continuing Medical Education (CME) credits for medical providers in learning about driving safety; and
- Facilitate referrals of medically at-risk drivers to the driver licensing authority for review.

V. Law Enforcement

Law Enforcement plays an important role in identifying at-risk drivers on the road. States should ensure that State and local older driver safety programs include a law enforcement component. Essential elements of the law enforcement component include:

- A communications plan for reaching law enforcement officers with information on medically at-risk drivers;
- Training and education for law enforcement officers that includes emphasis on ''writing the citation'' for older violators, identifying the medically at-risk driver, and making referrals of the medically at-risk driver to the driver licensing authority; and
- An easy way for law enforcement officers who are in the field to make referrals of medically at-risk drivers to the driver licensing authority.

VI. Social and Aging Services Providers

At the State-level, there are agencies that are responsible for coordinating aging services. These agencies should be collaborating with the State DOT-Transit offices in the planning for and provision of transportation services for older residents. State Highway Safety Offices should:

- Collaborate with State Units on Aging and other social services providers on providing support related to older drivers who are transitioning from driving;
- Collaborate with State DOT-Transit offices and local planning organizations to provide information at the local level on how individuals can access transportation services for older people; and
- Develop joint communications strategies and messages related to driver transitioning.
- States are encouraged to review and use strategies outlined in *Countermeasures That Work.*

VII. Communication Program

States should develop and implement communication strategies directed at

specific high-risk populations as identified by crash and population-based data. States should consider a range of audiences, including families and friends of at-risk drivers. Communications should highlight and support specific policies and programs underway in the States and communities. The programs and materials should be culturally-relevant, multi-lingual as necessary, and appropriate to the target audience. To achieve this, States should:

- Establish a working group of State and local agencies and organizations that have an interest in older driver safety and mobility with the goal of developing common message themes; and
- Focus the communication efforts on the support of the overall policy and program.

VIII. Program Evaluation and Data

Both problem identification and continual evaluation require effective record-keeping by State and local governments. The State should identify the frequency and types of older driver crashes. After problem identification is complete, the State can identify appropriate countermeasures. The State can promote effective evaluation by:

- Supporting detailed analyses of police accident reports involving older drivers;
- Encouraging, supporting, and training localities in process, impact, and outcome evaluation of local programs;
- Conducting and publicizing statewide surveys of public knowledge and attitudes about older driver safety;
- Evaluating the effectiveness of educational programs by measuring behavior and attitude changes;
- Evaluating the use of program resources and the effectiveness of existing countermeasures for the general public and high-risk populations;
- Ensuring that evaluation results are used to identify problems, plan new programs, and improve existing programs; and
- Maintaining awareness of trends in older driver crashes at the national level and how this might influence activities statewide.

**Highway Safety Program Guideline No. 16**

*Management of Highway Incidents*

Each State in cooperation with its political subdivisions should have a program which provides for rapid, orderly, and safe removal from the roadway of wreckage, spillage, and debris resulting from motor vehicle accidents, and for otherwise reducing the likelihood of secondary and chain-reaction collisions, and conditions hazardous to the public health and safety.

I. The program should provide at a minimum that:

A. Traffic Incident Management programs are effective and understood by emergency first responders.

B. Operational procedures are established and implemented to:

1. Define responsibilities of all first responders and classify all rescue and salvage responders and equipment;

2. Enable rescue and salvage equipment personnel to get to the scene of accidents rapidly and to operate effectively and safely on arrival—

a. On heavily traveled freeways and other limited access roads;

b. In other types of locations where wreckage or spillage of hazardous materials on or adjacent to highways endangers the public health and safety;

3. Extricate trapped persons from wreckage with reasonable care- to avoid injury or aggravating existing injuries;

4. Warn approaching drivers and detour them with reasonable care past hazardous wreckage or spillage;

5. Ensure safe handling of spillage or potential spillage of materials that are—

a. Radioactive

b. Flammable

c. Poisonous

d. Explosive

e. Otherwise hazardous; and

6. Expeditiously remove wreckage or spillage from roadways or otherwise ensure the resumption of safe, orderly traffic flow.

C. All rescue and salvage personnel are properly trained and retrained in the latest accident cleanup techniques.

D. An interoperable communications system is provided, adequately equipped and manned to provide coordinated efforts in incident detection and the notification, dispatch, and response of appropriate services.

II. The program should be periodically evaluated by the State to ensure adherence to the principles and concepts of the National Incident Management System using the Federal Highway Administration's Traffic Incident Management State Self-Assessment (*http://ops.fhwa.dot.gov/eto_tim_pse/preparedness/tim/self.htm*). The National Highway Traffic Safety Administration should be provided with an evaluation summary.

**Highway Safety Program Guideline No. 18**

*Motor Vehicle Crash Investigation and Incident Reporting (Formerly Accident Investigation and Reporting)*

Each State should have a highway safety program for the investigation and reporting of all motor vehicle crashes and incidents, and the associated deaths, injuries and reportable property damage that occur within the State.

I. A uniform, comprehensive crash investigation and incident reporting program would provide for gathering information—who, what, when, where, why, and how—on all motor vehicle crashes and incidents, and the associated deaths, injuries, and property damage within the State and entering the information into the traffic records system for use in planning, evaluating, and furthering highway safety program goals.

II. For the purpose of this guideline, the definitions adhere to D16.1–2007, the Manual on Classification of Motor Vehicle Traffic Accidents

III. (*http://downloads.nsc.org/pdf/D16.1_Classification_Manual.pdf*).

IV. A model crash investigation and incident reporting program would be structured as follows:

A. Administration.

1. There should be a State agency having primary responsibility for the collection, storing, processing, administration and supervision of crash investigation and incident reporting information and for providing this information upon request to other user agencies.

2. At all levels of government, there should be adequate staffing (not necessarily limited to law enforcement officers) with the knowledge, skills and ability to conduct crash investigations and incident reporting and to process the collected information.

3. Procedures should be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of motor vehicle crashes and incidents, and processing of collected data.

4. Each State should establish procedures for entering crash investigation and incident information into the statewide traffic records system (established pursuant to Highway Safety Program Guideline No. 10 Traffic Records) and for assuring uniformity and compatibility of this data with the requirements of the system, including at a minimum:

a. Use of uniform definitions and classifications as denoted in the Model Minimum Uniform Crash Criteria

Guideline (MMUCC) (*http://www.mmucc.us*); and

b. A guideline format for input of data into a statewide traffic records system.

B. Crash investigation and incident reporting. Each State should establish procedures that require the reporting of motor vehicle crashes and incidents to the responsible State agency within a reasonable time after the occurrence.

C. Driver reports.

1. In motor vehicle crashes involving only property damage, and where the motor vehicle can be safely driven away from the scene, the drivers of the motor vehicles involved should be required to submit a written report consistent with State reporting requirements, to the responsible State agency. A motor vehicle should be considered capable of being normally and safely driven if it does not require towing and can be operated under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway. Each driver report should include, at a minimum, the following information relating to the crash:

a. Location
b. Date
c. Time
d. Identification of drivers
e. Identification of the owner
f. Identification of any pedestrians, passengers, and pedal-cyclists
g. Identification of the motor vehicles
h. Direction of travel of each motor vehicle involved
i. Other property involved
j. Environmental conditions existing at the time of the accident
k. A narrative description of the events and circumstances leading up to the time of the crash and immediately after the crash.

2. In all other motor vehicle crashes or incidents, the drivers of the motor vehicles involved should be required to immediately notify and report the motor vehicle crash or incident to the nearest law enforcement agency of the jurisdiction in which the motor vehicle crash or incident occurred. This includes, but is not limited to, motor vehicle crashes or incidents involving:

a. Fatal or nonfatal personal injury or

b. Damage to the extent that any motor vehicle involved cannot be driven under its own power, and therefore requires towing.

D. Motor vehicle crash investigation and incident reporting. Each State should establish a plan for motor vehicle crash investigation and incident reporting that meets the following criteria:

1. A law enforcement agency investigation should be conducted of all motor vehicle crashes and incidents identified in section III.C.2 of this guideline. Information collected should be consistent with the law enforcement mission of detecting and apprehending violators of any criminal or traffic statute, regulation or ordinance, and should include, as a minimum, the following:

a. Violation(s), if any occurred, cited by section and subsection, numbers and titles of the State code, that contributed to the motor vehicle crash or incident or for which the driver was arrested or cited.

b. Information supporting each of the elements of the offenses for which the driver was arrested or cited.

c. Information (collected in accordance with the program established under Highway Safety Program Guideline No. 15, Traffic Law Enforcement Services), relating to human, vehicular, and roadway factors causing individual motor vehicle crashes and incidents, injuries, and deaths, including failure to use seat belts.

2. Multidisciplinary motor vehicle crash investigation teams should be established, with representatives from appropriate interest areas, such as law enforcement, prosecutorial, traffic, highway and automotive engineering, medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and should be for the purpose of determining the causes of motor vehicle crashes, injuries, and deaths. These teams should conduct investigations of an appropriate sampling of motor vehicle crashes in which there were one or more of the following conditions:

a. Locations that have a similarity of design, traffic engineering characteristics, or environmental conditions, or that have a significantly large or disproportionate number of crashes.

b. Motor vehicles or motor vehicle parts that are involved in a significantly large or disproportionate number of motor vehicle crashes, or fatal or injury producing crashes or incidents.

c. Drivers, pedestrians, and motor vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of fatal or injury producing motor vehicle crashes or incidents.

d. Motor vehicle crashes in which the causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed.

e. Other factors tha t concern State and national emphasis programs.

V. Evaluation.

The program should be evaluated at least annually by the State. The National Highway Traffic Safety Administration should be provided with a copy of the evaluation.

**Authority:** 23 U.S.C. Section 402.

Issued in Washington, DC on November 25, 2013.

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2013–28635 Filed 11–27–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Rail Depreciation Studies

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of OMB Approval of Information Collection.

**SUMMARY:** Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3519 (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.10, the Surface Transportation Board has obtained OMB approval for its information collection, Rail Depreciation Studies. *See* 78 FR 18676 (Mar. 27, 2013).

This collection, codified at 49 CFR part 1201, Section 4–2(b), has been assigned OMB Control No. 2140–0028. Unless renewed, OMB approval expires on August 31, 2016. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.8, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–28615 Filed 11–27–13; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Recordations, Water Carrier Tariffs, and Agricultural Contract Summaries

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of OMB Approval of Information Collections.

**SUMMARY:** Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3519 (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.10, the Surface Transportation Board has obtained OMB approval for the information collections listed below with assigned OMB control numbers and the dates on which these approvals will expire if not renewed.

(1) Recordations, Control Number 2140–0025

(2) Water Carrier Tariffs, Control Number 2140–26

(3) Agricultural Contract Summaries, Control Number 2140–0024

*See* 78 FR 18675–01 (Mar. 27, 2013).

Unless renewed, OMB approval for each of these collections expires on August 31, 2016. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.8, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–28613 Filed 11–27–13; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Household Movers' Disclosure Requirements

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of OMB approval of information collection.

**SUMMARY:** Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3519 (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.10, the Surface Transportation Board has obtained OMB approval for its information collection, Household Movers' Disclosure Requirements. *See* 78 FR 18421–01 (Mar. 26, 2013).

This collection has been assigned OMB Control No. 2140–0027. Unless renewed, OMB approval expires on August 31, 2016. The display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 CFR 1320.8, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–28612 Filed 11–27–13; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0129]**

### Proposed Information Collection (Supplemental Disability Report); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to evaluate claims for disability insurance benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0129'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Supplemental Disability Report, VA Form Letter 29–30a.

*OMB Control Number:* 2900–0129.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form Letter 29–30a is used by the insured to provide additional information required to process a claim for disability insurance benefits.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 548 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 6,570.

Dated: November 25, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*Department Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2013–28596 Filed 11–27–13; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0041]**

### Proposed Information Collection (Compliance Inspection Report) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether dwellings under construction comply with standards prescribed for specially adapted housing grant disbursement.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2014.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0041'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Compliance Inspection Report.

*OMB Control Number:* 2900–0041.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Fee-compliance inspectors complete VA Form 26–1839 during their inspection on properties under construction. The inspections provide a level of protection to Veterans by assuring them and VA that the adaptation are in compliance with the plans and specifications for which a specially adapted housing grant is based.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 900 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 3,600.

Dated: November 25, 2013.

By direction of the Acting Secretary.

**Crystal Rennie,**

*Department Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2013–28595 Filed 11–27–13; 8:45 am]

**BILLING CODE 8320–01–P**

---

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0771]**

### Comment Request; Insurance Survey

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine how well the Insurance Service program meets customer service standards.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 28, 2014.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0771'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8924.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Insurance Survey.

*OMB Control Number:* 2900–0771.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VBA administers integrated programs of benefits and services, established by law for veterans and their survivors, and service personnel. Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. Customer satisfaction surveys are used to gauge customer perceptions of VA services as well as customer expectations and desires.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 48 hours.

*Estimated Average Burden per Respondent:* 6 minutes.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 480.

Dated: November 25, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Department of Veterans Affairs.*

[FR Doc. 2013–28594 Filed 11–27–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of amendment to an existing system of records.

**SUMMARY:** As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), notice is hereby given that the Department of Veterans Affairs (VA) proposes to modify its existing system of records ''Loan Guaranty Fee Personnel and Program Participant Records-VA (17VA26).''

**DATES:** Comments on the proposed modifications to the routine uses must be received no later than 30 days after date of publication in the **Federal Register**, on or before December 30, 2013. If no public comment is received during the period allowed for comments, the routine use will become effective December 30, 2013.

**ADDRESSES:** Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Erica Lewis, Loan Specialist, Loan Guaranty Service, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 632–8823.

**SUPPLEMENTARY INFORMATION:** The Department is proposing to amend its system of records titled ''Loan Guaranty Fee Personnel and Program Participant Records-VA (17VA26),'' by adding a new policy and practice for storing of records in the system to permit VA to keep records on fee personnel and program participants on paper documents maintained in file folders and as electronically scanned documents.

VA has determined that it may destroy original paper documents/records after the information has been converted to an electronic medium and is verified as a necessary and proper means of storage, and that the specific storage proposed for electronically scanned documents is appropriate.

A copy of the revised system notice has been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 3791618, July 25, 1994.)

The proposed storage will be added to the system of records titled ''Loan Guaranty Fee Personnel and Program Participant Records-VA (17VA26)'' as published at 40 FR 38095, August 26, 1975, and amended at 52 FR 721, January 8, 1987, and 69 FR 44569, July 26, 2004.

Approved: November 8, 2013.

**Jose D. Riojas,**

*Chief of Staff, Department of Veterans Affairs.*

### 17VA26

**SYSTEM NAME:**

Loan Guaranty Fee Personnel and Program Participant Records-VA

**SYSTEM LOCATION:**

Records on nonsuspended fee personnel and program participants are maintained at Department of Veterans Affairs (VA) regional offices, medical and regional office centers, VA offices, and VA centers having loan guaranty activities. Records of nonsupervised lenders and subsidiaries of supervised lenders having authority to process VA loans automatically are maintained in VA Central Office. National Control List of suspended program participants and fee personnel are maintained at VA regional offices, medical and regional office centers, VA offices, and VA centers having loan guaranty activities. A Master Control list is maintained only at VA Central Office. Address locations are listed in Appendix 1 at the end of this document.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The following categories of individuals will be covered by this system: (1) Fee personnel who may be paid by VA or by someone other than VA (i.e., appraisers, compliance inspectors, management brokers, and loan closing and fee attorneys who are not VA employees but are paid for actual case work performed), and (2) program participants (i.e., property management brokers and agents, real estate sales brokers and agents, participating lenders and their employees, title companies whose fees are paid by someone other than VA, and manufactured home dealers, manufacturers, and manufactured home park or subdivision owners).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records (or information contained in records) may include: (1) Applications by individuals to become VA-approved fee basis appraisers, compliance inspectors, fee attorneys, or management brokers. These applications include information concerning applicant's name, address, business phone numbers, Social Security numbers or taxpayer identification numbers, and professional qualifications; (2) applications by non-supervised lenders for approval to close guaranteed loans without the prior approval of VA (automatically); (3) applications by lenders supervised by Federal or State agencies for designation as supervised automatic lenders in order that they may close loans without the prior approval (automatically) of VA; applications for automatic approval or designation (i.e., (2) and (3)) contain information concerning the corporate structure of the lender, professional qualifications of the lender's officers or employees, financial data such as profit and loss statements and balance sheets to insure the firm's financial integrity; (4) identifying information such as names, business names (if applicable), addresses, phone numbers, and professional resumes of corporate officials or employees; (5) corporate structure information on prior approval lenders, participating real estate sales brokers or agents, developers, builders, investors, closing attorneys, or other program participants as necessary to carry out the functions of the Loan Guaranty Program; (6) records of performance concerning appraisers, compliance inspectors, management brokers, or fee attorneys on both firms and individual employees; (7) records of performance including disciplinary proceedings, concerning program participants; e.g., lenders, investors, real estate brokers, builders, fee appraisers, compliance inspectors, and developers both as to the firm and to individual employees maintained on an as-needed basis to carry out the functions of the Loan Guaranty Program; (8) National Control Lists which identify suspended real estate brokers and agents, lenders and their employees, investors, manufactured home dealers and manufacturers, and builders or developers; and (9) a master record of the National Control List (i.e., Master

Control List) which includes information regarding parties previously suspended but currently reinstated to participation in the Loan Guaranty Program in addition to all parties currently suspended.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 38, United States Code, chapter 3, section 210(c)(1); title 38, United States Code, chapters 21 and 37.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

2. Any information in this system may be disclosed to a Federal, State, or local agency, upon its official request, to the extent the agency has demonstrated that it is relevant and necessary to that agency's decision on: The hiring, transfer, or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance or continuance of a license, grant, or other benefit by that agency.

3. Any information in this system may be disclosed to a Federal, State, or local agency maintaining civil or criminal violation records, or other pertinent information such as prior employment history, prior Federal employment background investigations, and personal or educational background in order for VA to obtain information from that agency relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit.

4. Any information in this system which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, may be disclosed to a Federal, State, local, or foreign agency 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.

5. Identifying information and the reasons for the suspension of builders, developers, lenders, lender employees, real estate sales brokers and agents, manufactured home dealers, manufacturers, or other program participants suspended from participation in the Loan Guaranty Program may be disclosed to the Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), United States Department of Agriculture (USDA), Farmers Home Administration, or other Federal, State, or local agencies to enable that agency to consider imposing similar restrictions on these suspended persons and/or firms.

6. Identifying information and the performance records of qualified fee appraisers and compliance inspectors, including any information regarding their termination, non-redesignation, temporary suspension, or resignation from participation in the Loan Guaranty Program, including the records of any disciplinary proceedings, may be disclosed to Federal, State, or local, or non-government agencies, businesses, and professional organizations, to permit these entities to employ, continue to employ or contract for the services of qualified fee personnel, monitor the performance of such personnel, and take any appropriate disciplinary action.

7. Identifying information as well as other information such as educational background and former business associations may be disclosed to business and professional organizations in order for VA to obtain these organizations' recommendations concerning the performance, character, professional activities, and other qualifications relating to participation in the Loan Guaranty Program.

8. Identifying information and information concerning amounts paid to contractors, fee personnel, and other contractors, fee personnel and other program participants may be released to the Department of the Treasury, Internal Revenue Service, where required by law.

9. Any information in this system may be disclosed to a Federal Grand jury, a Federal court or a party in litigation, or a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for VA to respond to and comply with the issuance of a Federal subpoena.

10. Any information in this system may be disclosed to a State or municipal grand jury, a State or municipal court or a party in litigation, or to a State or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, in order for VA to respond to and comply with the issuance of a State or municipal subpoena; provided, that any disclosure of claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

11. Identifying information and the reasons for suspension of individuals and/or firms suspended from the Loan Guaranty Program may be disclosed to other participants in the Loan Guaranty Program in order that they may decide whether or not to employ, or continue to employ, or contract with a suspended individual or firm.

12. Identifying information and information concerning the performance of contractors, fee personnel, and other program participants may be released to consumer reporting agencies in order that VA may obtain information on their prior dealings with other Government agencies and so that other Government agencies may have the benefit of VA's experience with such parties.

13. The names and addresses of debarred or suspended Loan Guaranty Program participants as well as the effective date and term of the exclusion may be disclosed to the General Services Administration to compile and maintain the ''Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.''

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records on fee personnel and program participants are kept on paper documents and maintained in file folders and as electronically scanned documents. The National Control List of suspended program participants is also maintained on magnetic disk at Central Office.

**RETRIEVABILITY:**

All records are indexed or cross-indexed by the name of the individual or the firm.

**SAFEGUARDS:**

Access to VA working spaces and record file storage areas is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service or other VA security personnel. Sensitive files involving pending suspension or a legal action are stored in separate locked files.

**RETENTION AND DISPOSAL:**

File cards and paper documents on suspended fee personnel and program participants are maintained until there has been a notification that the suspension has been terminated and the party reinstated into the Loan Guaranty

Program, at which time these records are destroyed by VA regional offices or centers. The Master Control List records are retained indefinitely. Records on fee personnel and program participants are retained for various periods extending up to 2 years after all loans have been liquidated. Destruction of all the above records is accomplished by either shredding or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Loan Guaranty Service (26), VA Central Office, Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or wants to determine the contents of such record should submit a written request or apply in person to the nearest VA Regional Loan Center. Address locations are listed in VA Appendix 1 at the end of this document. All inquiries must reasonably identify the relationship of the individual with the Loan Guaranty Program. Inquiries should include the individual's name, address, firm represented, if any, and capacity in which the individual participates or participated in the Loan Guaranty Program. However, some of the records in this system are exempt from the notification requirement under 5 U.S.C. 552a(k). To the extent that records in this system of records are not subject to exemption, they are subject to notification. A determination as to whether an exemption applies shall be made at the time a request for notification is received.

**RECORD ACCESS PROCEDURES:**

An individual seeks access to or wishes to contest records maintained under his or her name on this system may write, call, or visit the nearest VA Regional Loan Center. Address locations are listed in VA Appendix 1 at the end of this document. However, some of the records in this system are exempt from the record access and contesting requirements under 5 U.S.C. 552a(k). To the extent that records in this system of records are not subject to exemption, they are subject to access and contest. A determination as to whether an exemption applies shall be made at the time a request for access or contest is received.

**CONTESTING RECORD PROCEDURES:**

(See ''Record access procedures'' above.)

**RECORD SOURCE CATEGORIES:**

The information and the records in this system are obtained from the applicant, lenders, brokers and builder/sellers, credit and financial reporting agencies, an applicant's credit sources, depository institutions and employers, independent auditors and accountants, hazard insurance companies, taxing authorities, title companies, fee personnel, business and professional organizations, other VA records, other Federal, State, and local agencies, and other parties of interest involving VA-guaranteed, insured, vendee or direct loans or specially adapted housing.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The Secretary of Veterans Affairs has exempted this system of records from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k)(2) and (5).

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4)(G), (H), and (I)
5 U.S.C. 552a(f)

**REASONS FOR EXEMPTIONS:**

The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Loan Guaranty Service to prevent subjects of internal audit investigations for potential fraud and abuse in the VA Loan Guaranty Program from frustrating the investigatory process, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources. This information is also being exempted to maintain the confidentiality and integrity of material compiled solely for the purpose of determining the suitability, eligibility, or the qualifications of prospective VA program participants.

## VA Appendix 1

### VA Regional Offices with Loan Activities

Veterans should call the telephone numbers listed to obtain information or assistance with the VA Home Loan program. For more information or to search for a facility near you by jurisdiction, visit *http://www.benefits.va.gov/homeloans/contact_rlc_info.asp* or call (877) 827–3702.

Please send address and telephone number corrections to: Department of Veterans Affairs, Loan Guaranty Service (26), 810 Vermont Ave. NW., Washington, DC 20420.

**Atlanta Regional Loan Center**

*Jurisdiction for Georgia, North Carolina, South Carolina, Tennessee:*

Office: 1700 Clairmont Road, Decatur, GA 30033–4032
Mail: P.O. Box 100023, Decatur, GA 30031–7023
Phone: 1–888–768–2132

**Cleveland Regional Loan Center**

*Jurisdiction for Connecticut, Delaware, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont:*

Office and Mail: 1240 East, Ninth Street, Cleveland, OH 44199
Phone: 1–800–729–5772

**Denver Regional Loan Center**

*Jurisdiction for Alaska, Colorado, Idaho, Montana, Oregon, Utah, Washington, Wyoming:*

Office: 155 Van Gordon Street, Lakewood, CO 80228
Mail: Box 25126, Denver, CO 80225
Phone: 1–888–349–7541

**Honolulu Regional Office (Loan Guaranty Division)**

*Jurisdiction for Hawaii, Guam, American Samoa, Commonwealth of the Northern Marianas:*

Office and Mail: 459 Patterson Road, Honolulu, HI 96819
Phone: 1–808–433–0481

**Houston**

*Jurisdiction for Arkansas, Louisiana, Oklahoma, Texas:*

Office and Mail: 6900 Almeda Road, Houston, TX 77030–4200
Phone: 1–888–232–2571 Ext. 1855

**Phoenix**

*Jurisdiction for Arizona, California, New Mexico, Nevada:*

Office and Mail: 3333 N. Central Avenue, Phoenix, AZ 85012–2402
Phone: 1–888–869–0194

**Roanoke**

*Jurisdiction for District of Columbia, Kentucky, Maryland, Virginia, West Virginia:*

Office: 210 First Street, Roanoke, VA 24011
Mail: 116 N. Jefferson Street, Roanoke, VA 24016
Phone: 1–800–933–5499

**St. Paul**

*Jurisdiction for Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin:*

Office and Mail: 1 Federal Drive, Ft. Snelling, St. Paul, MN 55111–4050
Phone: 1–800–827–0611

**St. Petersburg**

*Jurisdiction for Alabama, Florida, Mississippi, Puerto Rico, U.S. Virgin Islands:*

Office: 9500 Bay Pines Boulevard, St. Petersburg, FL 33708
Mail: P.O. Box 1437, St. Petersburg, FL 33731
Phone: 1–888–611–8916

[FR Doc. 2013–28714 Filed 11–27–13; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 78 Friday,

No. 230 November 29, 2013


Part II

## Environmental Protection Agency

40 CFR Part 80

2014 Standards for the Renewable Fuel Standard Program; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

**[EPA–HQ–OAR–2013–0479; FRL–9900–90–OAR]**

**RIN 2060–AR76**

## 2014 Standards for the Renewable Fuel Standard Program

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

**ACTION:** Proposed rule.

**SUMMARY:** Under section 211(o) of the Clean Air Act, the Environmental Protection Agency is required to set the renewable fuel percentage standards each November for the following year. Today's action proposes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all motor vehicle gasoline and diesel produced or imported in the year 2014. For cellulosic biofuel, the statute specifies that EPA is to project the volume of production and must base the cellulosic biofuel standard on projected available volume if it is less than the applicable volume set forth in the Act. Today EPA is proposing a cellulosic biofuel volume for 2014 that is below the applicable volume specified in the Act. The statute also provides EPA the discretion to adjust the volumes of advanced biofuel and total renewable fuel under certain conditions. Relying on its Clean Air Act waiver authorities, EPA is proposing to adjust the applicable volumes of advanced biofuel and total renewable fuel to address projected availability of qualifying renewable fuels and limitations in the volume of ethanol that can be consumed in gasoline given practical constraints on the supply of higher ethanol blends to the vehicles that can use them and other limits on ethanol blend levels in gasoline. These adjustments are intended to put the program on a manageable trajectory while supporting growth in renewable fuels over time. Finally, the statute requires EPA to determine the applicable volume of biomass-based diesel to be used in setting annual percentage standards under the renewable fuel standard program for years after 2012. EPA is proposing the applicable volume of biomass-based diesel that would apply in 2014 and 2015. EPA is requesting comment on a variety of alternative approaches and on a range of inputs and methodologies relevant for setting the applicable standards.

**DATES:** Comments must be received on or before January 28, 2014.

*Hearing:* We intend to hold a hearing. Details of the location and date will be provided in a separate notice.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0479, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *a-and-r-docket@epa.gov.*
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0479. 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 additional instructions on submitting comments, go to Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; Telephone number: 734–214–4131; Fax number: 734–214–4816; Email address: *macallister.julia@epa.gov,* or the public information line for the Office of Transportation and Air Quality; telephone number (734) 214–4333; Email address *OTAQ@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

| Category | NAICS [1] Codes | SIC [2] Codes | Examples of potentially regulated entities |
|---|---|---|---|
| Industry | 324110 | 2911 | Petroleum Refineries. |
| Industry | 325193 | 2869 | Ethyl alcohol manufacturing. |

| Category | NAICS [1] Codes | SIC [2] Codes | Examples of potentially regulated entities |
|---|---|---|---|
| Industry | 325199 | 2869 | Other basic organic chemical manufacturing. |
| Industry | 424690 | 5169 | Chemical and allied products merchant wholesalers. |
| Industry | 424710 | 5171 | Petroleum bulk stations and terminals. |
| Industry | 424720 | 5172 | Petroleum and petroleum products merchant wholesalers. |
| Industry | 454319 | 5989 | Other fuel dealers. |

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this proposed action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the preceding section.

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

1. Submitting CBI

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

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**Outline of this preamble**


I. Executive Summary
A. Purpose of This Action
B. Summary of Major Provisions in This Notice
1. Cellulosic Biofuel Volume for 2014
2. Biomass-Based Diesel Requirement in 2014 and 2015
3. Advanced Biofuel and Total Renewable Fuel in 2014
4. Proposed Annual Percentage Standards for 2014
C. Volume Requirements for 2015 and Beyond
II. Proposed Cellulosic Biofuel Volume for 2014
A. Statutory Requirements
B. Cellulosic Biofuel Volume Assessment for 2014
1. Potential Domestic Producers with Approved Pathways
2. Potential Domestic Producers without Existing Pathways
3. Potential Foreign Sources of Cellulosic Biofuel
4. Summary of Volume Projections for Individual Companies
C. Proposed Cellulosic Biofuel Volume for 2014
D. Rescission of the 2011 Cellulosic Biofuel Standards
III. Proposed National Volume Requirement for Biomass-Based Diesel in 2014 and 2015
A. Statutory Requirements
B. Compliance with 2013 Volume Requirement of 1.28 Billion Gallons
C. Determination of Applicable Volume for 2014 and 2015
IV. Proposed National Volume Requirements for Advanced Biofuel and Total Renewable Fuel for 2014
A. Statutory Authorities for Reducing Volumes to Address Biofuel Availability and the Ethanol Blendwall
1. Cellulosic Waiver Authority
2. General Waiver Authority
3. Combining Authorities for Reductions in Advanced Biofuel and Total Renewable Fuel
B. Determination of Reductions in Total Renewable Fuel
1. Estimating Ethanol Volumes that Could Reasonably Be Consumed
a. Projected Composition of 2014 Gasoline Supply
b. Assessment of E85 Consumption
c. Proposed Projection of E85 Consumption in 2014
d. Estimating Total Ethanol Consumption in 2014
2. Estimating Availability of Non-Ethanol Renewable Fuel Volumes
a. Non-Ethanol Cellulosic Biofuel
b. Biomass-Based Diesel
c. Non-Ethanol Advanced Biofuel
d. Non-Ethanol Non-Advanced Renewable Fuel
3. Treatment of Carryover RINs in 2014
4. Proposed Range for the Volume Requirement for Total Renewable Fuel
C. Determination of Reductions in Advanced Biofuel
1. Available Volumes of Advanced Biofuel in 2014
a. Cellulosic biofuel
b. Biomass-Based Diesel
c. Domestic Production of Other Advanced Biofuel
d. Imported Sugarcane Ethanol
e. Summary
2. Options for Determining Appropriate Reductions in Advanced Biofuel
a. Option 1: Advanced Biofuel Availability
b. Option 2: Full Reduction in Cellulosic Biofuel
c. Option 3: Availability, Growth, and Limits on Ethanol Consumption
D. Summary of Proposed Volume Requirements for 2014
E. Volume Requirements for 2015 and Beyond
V. Proposed Percentage Standards for 2014
A. Background
B. Calculation of Standards
1. How Are the Standards Calculated?
2. Small Refineries and Small Refiners
3. Proposed Standards
VI. Public Participation
A. How Do I Submit Comments?
B. How Should I Submit CBI to the Agency?
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act

D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
VIII. Statutory Authority

## I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) which was added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), resulting in the publication of major revisions to the regulatory requirements on March 26, 2010.[1]

The national volumes of renewable fuel to be used under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA section 211(o)(2). The volumes for 2014 are shown in Table I–1. Note that cellulosic biofuel and biomass-based diesel categories are nested within advanced biofuel, which is itself nested within the renewable fuel category.

TABLE I–1—REQUIRED APPLICABLE VOLUMES IN BILLION GALLONS (BILL GAL) IN THE CLEAN AIR ACT FOR 2014

| | |
|---|---|
| Cellulosic biofuel | 1.75 [a] |
| Biomass-based diesel | ≥1.0 [b] |
| Advanced biofuel | 3.75 [a] |
| Renewable fuel | 18.15 [a] |

[a] Ethanol-equivalent volume.
[b] Actual volume. The ethanol-equivalent volume would be 1.5 if biodiesel is used to meet this requirement.

Under the RFS program, EPA is required to determine and publish annual percentage standards for each compliance year by November 30 of the previous year. The percentage standards are calculated so as to ensure use in transportation fuel of the national ''applicable volumes'' of four types of biofuel (cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel) that are either set forth in the Clean Air Act or established by EPA in accordance with the Act's requirements. The percentage standards are used by obligated parties (generally, producers and importers of transportation fuel) to calculate their individual compliance obligations. The percentage standards are applied to the volume of non-renewable transportation fuel that each obligated party produces or imports during the specified calendar year to determine the volumes of renewable fuel that must be used as transportation fuel, heating oil, or jet fuel.

As required by statute, we are proposing to establish the volume for cellulosic biofuel based on projected availability of such fuel—which is below the statutory target for 2014. In addition, we have evaluated the availability of qualifying renewable fuels and factors that in some cases limit supplying those fuels to the vehicles and equipment that can consume them, including the set of factors referred to as the ethanol blendwall. Based on this evaluation we believe that adjustments to the volumes of advanced biofuel and total renewable fuel required under the statute are warranted for 2014 due to an inadequate domestic supply of these fuels (see Section IV.A for further detail). We are also proposing to maintain the same volume for biomass-based diesel for 2014 and 2015 as was adopted for 2013. The volumes that we are proposing for 2014, as well as the ranges on which we are seeking comment, are shown below. With the exception of the volume requirement for cellulosic biofuel, the proposed volumes correspond to the preferred approach described in today's proposal, but we discuss and are seeking comment on alternative approaches as well.

TABLE I–2—PROPOSED 2014 VOLUME REQUIREMENTS [a]

| | Proposed volume | Projected range |
|---|---|---|
| Cellulosic biofuel | 17 mill gal. | 8–30 mill gal. |
| Biomass-based diesel | 1.28 bill gal. | 1.28 bill gal. [b] |
| Advanced biofuel | 2.20 bill gal | 2.00–2.51 bill gal. |
| Renewable fuel | 15.21 bill gal | 15.00–15.52 bill gal. |

[a] All volumes are ethanol-equivalent, except for biomass-based diesel which is actual.
[b] EPA is requesting comment on alternative approaches and higher volumes.

Section II contains a detailed discussion of the basis for our proposed volume of cellulosic biofuel for 2014, Section III contains a detailed discussion of the basis for our proposed volume of biomass-based diesel for 2014 and 2015, and Section IV contains a detailed discussion of the basis for our proposed volumes, as well as alternative potential approaches on which we are requesting comment, for advanced biofuel and total renewable fuel for 2014.

In developing this proposal, we have been cognizant that Congress anticipated and intended the RFS program to promote substantial, sustained growth in biofuel production and consumption—beyond the levels that have been achieved to date. Although current gasoline demand and forecasts of future gasoline demand have decreased since EISA's enactment in 2007, EPA continues to support the objective of continued growth in renewable fuel production and consumption, as well as the central policy goals underlying the RFS program: reductions in greenhouse gas emissions, enhanced energy security, economic development, and technological innovation. The approach reflected in today's proposal is consistent with those objectives and is intended to put the RFS program on a manageable trajectory while supporting continued growth in renewable fuels over time. As emphasized throughout the proposal, we are seeking comment and information on a variety of alternative approaches as well as ranges of inputs and methodologies relevant to setting these standards, and look forward to engagement with stakeholders on all aspects of the proposal.

[1] 75 FR 14670.

*A. Purpose of this action*

EPA is today proposing annual volume requirements for obligated parties for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel for 2014. Table I.A–1 lists the statutory provisions and associated criteria relevant to determining the national applicable volumes used to set the applicable standards in today's proposed rule.

TABLE I.A–1—STATUTORY PROVISIONS FOR DETERMINATION OF APPLICABLE VOLUMES

| Applicable volumes | Clean Air Act reference | Criteria provided in statute for determination of applicable volume |
|---|---|---|
| Cellulosic biofuel in 2014 | 211(o)(7)(D)(i) | Required volume must be lesser of volume specified in CAA 211(o)(2)(B)(i)(III) or EPA's projected volume. |
| Biomass-based diesel in 2014 and 2015. | 211(o)(2)(B)(ii) and (v) | Required volume for years after 2012 must be at least 1.0 bil gal, and must be based on a review of implementation of the program and an analysis of several factors. |
| Advanced biofuel in 2014 | 211(o)(7)(D)(i) | If applicable volume of cellulosic biofuel is reduced to the projected volume, EPA may reduce advanced biofuel and total renewable fuel by the same or lesser volume. No criteria specified. |
| | 211(o)(7)(A) | EPA may waive any portion of the statutory volume requirements if implementation of those requirements would severely harm the economy or environment of a State, region, or the United States, or there is an inadequate domestic supply. |
| Total renewable fuel in 2014 | 211(o)(7)(D)(i) | If applicable volume of cellulosic biofuel is reduced to the projected volume, EPA may reduce advanced biofuel and total renewable fuel by the same or lesser volume. No criteria specified. |
| | 211(o)(7)(A) | EPA may waive any portion of the statutory volume requirements if implementation of those requirements would severely harm the economy or environment of a State, region, or the United States, or there is an inadequate domestic supply. |

Under the statute, EPA must annually determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected volume of production available during the year. In today's proposed rule, we present our analysis of cellulosic biofuel production and projected volume for 2014. This analysis is based on our evaluation of individual producers' production plans and progress to date following discussions with cellulosic biofuel producers, the Energy Information Administration (EIA), the Department of Agriculture (USDA), and the Department of Energy (DOE), and includes an assessment of the probabilities associated with production schedules from each of these producers.

While CAA section 211(o)(2)(B) specifies the volumes of biomass-based diesel to be used in the RFS program through year 2012, it directs the EPA to establish the applicable volume of biomass-based diesel for years after 2012. The statute also lists the factors that must be considered in this determination. In today's action we are proposing volume requirements for biomass-based diesel for both 2014 and 2015.

There are two different authorities in the statute that permit EPA to reduce volumes of advanced biofuel and total renewable fuel below the volumes specified in the statute. When we lower the applicable volume of cellulosic biofuel below the volume specified in CAA 211(o)(2)(B)(i)(III), we also have the authority to reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount. We can also reduce the applicable volumes of advanced biofuel or total renewable fuel under the general waiver authority provided at CAA 211(o)(7)(A) under certain conditions. Today's proposal uses a combination of these two authorities to reduce volumes of both advanced biofuel and total renewable fuel to address two important realities:

- Limitations in the volume of ethanol that can be consumed in gasoline given practical constraints on the supply of higher ethanol blends to the vehicles that can use them and other limits on ethanol blend levels in gasoline—a set of factors commonly referred to as the ethanol ''blendwall''
- Limitations in the ability of the industry to produce sufficient volumes of qualifying renewable fuel.

As described in detail in Section IV, today's action lays out a framework for determining the applicable volume requirements that addresses these two realities. We are proposing to use this framework to establish the volume requirements in 2014. As described in more detail in Section IV.E, we believe that this framework would also be appropriate for later years, subject to adjustments made in the course of the rulemaking process and taking into account the specific facts about the availability of renewable fuels at the time of the final rulemaking.

In today's proposed rule we have also provided the annual percentage standards (shown in Section I.B.4 below) that would apply to all producers and importers of gasoline and diesel in 2014. The percentage standards, which establish the legal requirement for the obligated parties, are based on the 2014 applicable volumes that we project for the four types of renewable fuel and a projection of volumes of gasoline and diesel consumption in 2014 from the Energy Information Administration (EIA).

*B. Summary of Major Provisions in This Notice*

1. Cellulosic Biofuel Volume for 2014

The cellulosic biofuel industry continues to transition from research and development (R&D) and pilot scale to commercial scale facilities, leading to

significant increases in production capacity. RIN generation from the first commercial scale cellulosic biofuel facility began in March 2013.[2] A second facility began producing fuel in July 2013 with several others expected to follow in 2014. Based on information we have collected from these companies and discussions with EIA, we have identified five companies we expect to produce cellulosic biofuel in 2014. There are an additional three companies that may be in a position to produce cellulosic biofuel if additional pathways are approved by EPA. Each of the relevant facilities is listed in Table I.B.1–1 along with our estimate of their projected 2014 volume. Based on the information we have received from these companies, our conversations with other government agencies, and EPA's own engineering judgment we are projecting that 8–30 million ethanol-equivalent gallons of cellulosic biofuel will be available in 2014. This range does not account for the estimate that EIA is required to provide to EPA containing estimates of the volume of cellulosic biofuel projected to be sold or introduced into commerce in 2014. The projected range also does not include any volume from facilities that could use pathways which have not yet been approved. If production volumes from these facilities were included, we would project a production range of 53–83 million ethanol-equivalent gallons.

As part of estimating the volume of cellulosic biofuel that would be made available in the U.S. in 2014, we researched all potential production sources by company and facility. This included sources that were still in the planning stages, those that were under construction, and those that are already producing some volume of cellulosic ethanol, cellulosic diesel, or some other type of cellulosic biofuel. Facilities primarily focused on research and development were not the focus of our assessment as production from these facilities represents very small volumes of cellulosic biofuel, and these facilities typically have not generated RINs for the fuel they have already produced. From this universe of potential cellulosic biofuel sources, we identified the subset that is expected to produce commercial volumes of qualifying cellulosic biofuel for use in 2014. To arrive at a projected volume for each facility, we developed company specific projections based on discussions with cellulosic biofuel producers, EIA, USDA, and DOE, and on factors such as the current and expected state of funding, the status of the technology utilized, progress towards construction and production goals, and other significant factors that could potentially impact fuel production or the ability of the produced fuel to qualify for cellulosic biofuel Renewable Identification Numbers (RINs) in 2014. Further discussion of these factors can be found in Section II.B.

In our assessment we focused on domestic sources of cellulosic biofuel. At the time of this proposed rule no internationally-based cellulosic biofuel production facilities have registered under the RFS program and therefore no volume from international producers has been included in our projections for 2014.

TABLE I.B.1–1—PROJECTED AVAILABLE CELLULOSIC BIOFUEL PLANT VOLUMES IN MILLION GALLONS (MILL GAL) FOR 2014

| Company | Location | Fuel type | Annual production capacity [a] | First production | Projected 2014 available volume [b] |
|---|---|---|---|---|---|
| **Companies With Approved Pathways** | | | | | |
| Abengoa | Hugoton, KS | Ethanol | 24 | 1Q 2014 [c] | 0–18 |
| DuPont | Nevada, IA | Ethanol | 30 | 2H 2014 [c] | 0–2 |
| INEOS Bio | Vero Beach, FL | Ethanol | 8 | 3Q 2013 | 2–5 |
| KiOR | Columbus, MS | Gasoline and Diesel | 11 | March 2013 | 0–9 |
| Poet | Emmetsburg, IA | Ethanol | 25 | 1H 2014 [c] | 0–6 |
| Total for companies with approved pathways. | | | | | 8–30 [d] |
| **Other Potential Cellulosic Biofuel Producers** | | | | | |
| CNG/LNG Producers | Various | CNG/LNG | Various | Various | 35–54 |
| Edeniq | Various | Ethanol | Various | 1H 2014 [c] | 0–7 |
| Ensyn | Stanley, WI | Heating Oil | 3 | 2007 | 0–5 |
| Total for both companies with approved pathways and those with proposed pathways. | | | | | 53–83 [d] |

[a] Facilities are generally designed to process a given quantity of feedstock and volume capacities may vary depending on yield assumptions.
[b] Volumes listed in million ethanol-equivalent gallons.
[c] Start-up dates for these facilities are projections.
[d] Total volumes are the result of Monte Carlo simulations rather than the sum of the low and high end of the range of projected available volume for each company. See Section II.C for more detail.

In projecting the actual volume of cellulosic biofuel that will be available for use in 2014, we have taken into account variation in expected start-up times, along with the facility production capacities, company production plans, the progress made in 2013, expected production distribution and a variety of other factors. We used this information

[2] A RIN is unique number generated by the producer and assigned to each gallon of a qualifying renewable fuel under the RFS program, and is used by refiners and importers to demonstrate compliance with the volume requirements under the program.

to determine the most likely production ranges for each of the individual companies and a production probability distribution within the range. We then used a Monte Carlo simulation to aggregate the individual ranges into a production projection for the cellulosic biofuel industry as a whole in 2014. We believe this method results in a projected production range that better represents our expectations for cellulosic biofuel production in 2014 than simply adding the low and high end of the production ranges from each of the individual companies. Section II discusses in greater detail our projections of cellulosic biofuel in 2014 and the companies we expect to produce this volume.

In response to a recent court decision, we are also proposing to rescind the cellulosic biofuel standards for 2011. In January 2013, the United States Court of Appeals for the District of Columbia Circuit issued a decision interpreting the statutory requirements for EPA's cellulosic biofuel projections, in the context of considering a challenge to the 2012 cellulosic biofuel standard. The Court found that in establishing the applicable volume of cellulosic biofuel for 2012, EPA had used a methodology in which ''the risk of overestimation [was] set deliberately to outweigh the risk of underestimation.'' The Court held EPA's action to be inconsistent with the statute because EPA had failed to apply a ''neutral methodology'' aimed at providing a prediction of ''what will actually happen,'' as required by the statute. As a result of this ruling, the Court vacated the 2012 cellulosic biofuel standard. See *API v. EPA,* 706 F.3d 474 (D.C. Cir. 2013). EPA later removed the 2012 cellulosic biofuel requirement from the regulations.[3] Since we used essentially the same methodology to develop the 2011 cellulosic biofuel standard as we did to develop the 2012 standard, we believe it would be appropriate to rescind the 2011 cellulosic biofuel standard as well and accordingly are proposing to do so in today's action. The money paid by obligated parties to purchase cellulosic waiver credits to comply with the 2011 cellulosic biofuel standard would be refunded if this action is finalized.[4]

2. Biomass-Based Diesel Requirement in 2014 and 2015

While section 211(o)(2)(B) specifies the volumes of biomass-based diesel through year 2012, it directs the EPA to establish the applicable volume of biomass-based diesel for years after 2012. Moreover, the statute requires that we finalize these biomass-based diesel volume requirements no later than 14 months before the first year for which that volume requirement will apply. We did not propose a volume requirement for biomass-based diesel in the February 7, 2013 Notice of Proposed Rulemaking because at that time we were still evaluating the potential market impacts of current production levels. In order to provide sufficient time for this evaluation, as well as the other analyses we are required to conduct, we delayed our proposal for the 2014 volume requirement for biomass-based diesel.

In today's action we are proposing to maintain the applicable volume of 1.28 bill gallons for biomass-based diesel for both 2014 and 2015. As required by the statute when setting biomass-based diesel volume requirements for years after 2012, our proposal is based on a consideration of the factors specified in the statute, including biodiesel production, consumption, infrastructure, climate change, energy security, the agricultural sector, air quality, and others. Section III provides additional discussion of our assessment of the proposed volume of 1.28 bill gal of biomass-based diesel.

3. Advanced Biofuel and Total Renewable Fuel in 2014

Since the RFS2 program began in 2010, EPA has considered reductions in advanced biofuel and total renewable fuel authorized under the cellulosic waiver provisions of 211(o)(7)(D)(i). In the past we have focused primarily on the availability of advanced biofuels in determining whether reductions in the required volume of cellulosic biofuel should be accompanied by reductions in the required volumes of advanced biofuel and total renewable fuel. The total volume of renewable fuel in the form of ethanol that could reasonably be available and supplied to vehicles as either E10 or higher ethanol blends given various constraints, was not a limiting factor for years prior to 2014. However, for 2014 and later years, the total volume of ethanol that can be consumed, and the total volume of non-ethanol renewable fuels that could reasonably be available, are together expected to be less than the volume requirements established in EISA for advanced biofuel and total renewable fuel. Therefore, we are proposing reductions in the volume requirements for these categories of renewable fuel to address these concerns.

We evaluated three potential approaches for reducing the applicable volume requirements for advanced biofuel and total renewable fuel. Each of these approaches would require use of a combination of the cellulosic and general waiver authorities at 211(o)(7)(D)(i) and 211(o)(7)(A), respectively, to address supply concerns associated with the blendwall. The three approaches differ primarily with regard to how the advanced biofuel requirement would be adjusted using these authorities. The first approach would lower the statutory volumes for advanced biofuels only to the extent that additional volumes are not projected to be available; the general waiver authority would be used to ensure that the total volume of renewable fuel would address supply concerns associated with the blendwall. The second approach would make reductions in advanced biofuel and total renewable fuel that are equal to the proposed reductions in cellulosic biofuel and would use the general waiver authority to make further reductions to the total renewable fuel requirement necessary to address the blendwall.

The third approach that we evaluated, and the one that we are proposing today, includes both a consideration of the capability of the relevant industries to make qualifying renewable fuels available, either through domestic production or importation, and also the capability of the relevant industries to ensure that those renewable fuels are used as transportation fuel, heating oil, or jet fuel.[5] The use of renewable fuels includes a consideration of the infrastructure available for distributing, blending, and dispensing renewable fuels, as well as appropriate vehicles in the fleet that can consume various renewable fuels, such as flex-fuel vehicles (FFVs). Our proposed framework for addressing both availability of qualifying renewable fuels and constraints on their consumption would make use of a combination of the cellulosic waiver authority at 211(o)(7)(D)(i) and the general waiver authority at 211(o)(7)(A). As described in detail in Section IV.A.2, we interpret the term ''inadequate domestic supply'' as it is used under the general waiver authority to include consideration of factors that affect consumption of renewable fuel. We believe the framework being proposed today best approximates the multiple goals that Congress intended in the RFS

[3] 78 FR 49794 (August 15, 2013).

[4] In 2011 obligated parties purchased 4,248,388 cellulosic biofuel waiver credits at a price of $1.13 per gallon-RIN for a total cost of $4,800,678.

[5] While the fuels that are subject to the percentage standards are currently only non-renewable gasoline and diesel, renewable fuels that are valid for compliance with the standards include those used as transportation fuel, heating oil, or jet fuel.

program, and we would intend this framework to apply not just to 2014, but to later years as well. However, we are soliciting comment on alternative approaches as well. We discuss the proposed framework and the alternative approaches in Section IV.

We believe that our proposed framework for determining appropriate volumes of total renewable fuel and advanced biofuel would simultaneously address the ethanol blendwall and limitations in availability of qualifying renewable fuels. For total renewable fuel, we would project the volume of ethanol that could reasonably be consumed as E10 and higher ethanol blends, and would add to that the volume of all non-ethanol renewable fuels that could reasonably be expected to be available. For advanced biofuel, we would sum the ethanol-equivalent volumes of the cellulosic biofuel requirement, the biomass-based diesel requirement, and the additional non-ethanol advanced biofuels that could reasonably be expected to be available and be consumed. In this process we have projected ranges that encompass the most likely outcomes, and we propose several approaches to determining the most likely value for the final rule.

4. Proposed Annual Percentage Standards for 2014

The renewable fuel standards are expressed as a volume percentage and are used by each refiner, blender, or importer to determine their renewable fuel volume obligations. The applicable percentages are set so that if each regulated party meets the percentages, and if EIA projections of gasoline and diesel use for the coming year prove to be accurate, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel actually used will meet the volumes required on a nationwide basis.

Four separate percentage standards are required under the RFS program, corresponding to the four separate volume requirements shown in Table I–1. The specific formulas we use in calculating the renewable fuel percentage standards are contained in the regulations at 40 CFR § 80.1405 and repeated in Section V.B.1. The percentage standards represent the ratio of renewable fuel volume to projected non-renewable gasoline and diesel volume. The projected volume of transportation gasoline and diesel used to calculate the standards in today's proposed rule was derived from EIA projections. The proposed standards for 2014 are shown in Table I.B.4–2. Detailed calculations can be found in Section V, including the projected 2014 gasoline and diesel volumes used.

TABLE I.B.4–2—PROPOSED PERCENTAGE STANDARDS FOR 2014

| | |
|---|---|
| Cellulosic biofuel | 0.010% |
| Biomass-based diesel | 1.16% |
| Advanced biofuel | 1.33% |
| Renewable fuel | 9.20% |

*C. Volume Requirements for 2015 and Beyond*

As highlighted above, EPA continues to support the objective—reflected in the statute—of continued growth in renewable fuel production and consumption, as well as the central goals of the RFS program: enhanced energy security and reductions in greenhouse gas emissions. We also recognize that issues concerning the availability of qualifying fuels and the consumption of ethanol will continue to be relevant in 2015 and beyond, particularly in light of projections that overall gasoline demand will continue to decline while the statutory volumes for renewable fuel volumes continue to increase. Our objective in this rulemaking is to develop a general approach for determining appropriate volume requirements that can be applied not only in 2014, but also for 2015 and beyond. As we consider comments received in response to this NPRM, our intent is to develop an approach that puts the RFS program on a manageable trajectory while supporting continued growth in renewable fuels over time. The proposed approach described in today's NPRM can and will account for new and improved data and changes in circumstances over time, including the substantial efforts underway to increase the volume of biofuel produced and consumed in the United States. Many companies, often supported by various government programs, are continuing to invest in efforts ranging from research and development to the construction of commercial scale facilities resulting in the ongoing growth of next generation biofuels. Similar efforts on the part of both public and private sectors are growing the infrastructure to enable expansion in the use of gasoline fuel blends containing greater than 10 percent ethanol. Under the right circumstances, there is substantial potential for continued growth in the use of ethanol and next generation biofuels, both in the near term and into the future. As both ethanol and non-ethanol renewable fuel volumes grow, the proposed methodology set forth in today's proposed rule will incorporate this growth into the development of the standards for the following year, providing an ongoing incentive for growth of biofuels. We recognize that a number of challenges must be overcome to fully realize the potential that exists for increased production and consumption of renewable fuels in the United States. We also recognize that while the RFS program is a central element of our domestic biofuels policy, a range of other tools, programs, and actions have the potential to play an important complementary role. We request information and ideas on what actions could be taken by the variety of industry and other private stakeholders, as well by the government, to help overcome these challenges, continue to foster innovation, and minimize the need for adjustments in the statutory renewable fuel volume requirements in the future.

**II. Proposed Cellulosic Biofuel Volume for 2014**

In order to project the volume of cellulosic biofuel production in 2014 for use in setting the applicable percentage standard, we considered information we received from EIA and information we collected from individual facilities that have the potential to produce qualifying volumes for consumption as transportation fuel, heating oil, or jet fuel in the U.S. in 2014. This section describes the volumes that we project will be produced or imported in 2014 as well as some of the uncertainties associated with those volumes.

In the past several years the cellulosic biofuel industry has continued to progress. The first cellulosic biofuel RINs under the current RFS regulations were produced in 2012 at two small demonstration scale facilities. During 2013, the first commercial scale cellulosic biofuel facilities have successfully completed commissioning and began fuel production, and several more large scale commercial production facilities are expected to begin fuel production in 2014. Projected costs for the production of cellulosic biofuels continues to fall as a result of ongoing technology development and operating experience gained from many research and development and demonstration-scale facilities across the country. These important advances include higher biofuel yields per ton of feedstock as well as lower enzyme and catalyst costs. As a result of these advances, the projected capital costs and energy costs to produce a gallon of cellulosic biofuel have decreased. New feedstock supply chains, which will be necessary to provide the raw materials for

anticipated commercial facilities, have been established, and in several cases companies have signed contracts to obtain significant quantities of feedstocks for their first commercial facilities. EPA has also approved new pathways to increase the variety of fuels for which cellulosic RINs can be generated and the feedstocks from which these fuels can be produced. These factors have combined to continue to reduce the perceived technical, financial, and regulatory risks associated with the cellulosic biofuel industry and place the cellulosic biofuel industry on firm ground for future growth.

Although the cellulosic biofuel industry faces many challenges and RIN-generating cellulosic biofuel production continues to be limited, the industry is growing incrementally, both in the United States and around the world.[6] New facilities projected to be brought online in the United States in 2014 would increase the production capacity of the cellulosic industry by approximately 600 percent. The following section discusses the companies the EPA reviewed in the process of projecting cellulosic biofuel production for use as a transportation fuel in the United States in 2014. Information on these companies forms the basis for our projection that the volume of cellulosic biofuel produced in 2014 is likely to be in the range of 8–30 million gallons. EPA will continue to monitor the progress of these facilities, as well as any others of which we become aware that have the potential for cellulosic biofuel production in 2014, in order to have the most up to date information possible to set the cellulosic biofuel standard in the final rule.

*A. Statutory Requirements*

The volumes of renewable fuel to be used under the RFS program each year (absent an adjustment or waiver by EPA) are specified in CAA 211(o)(2). For 2014, the statute specifies a cellulosic biofuel volume requirement of 1.75 billion gallons. The statute requires that if EPA determines, based on EIA's estimate, that the projected volume of cellulosic biofuel production for the following year is less than the applicable volume EPA is to reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year.

In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, the Act also indicates that we may reduce the applicable volumes of advanced biofuels and total renewable fuel by the same or a lesser volume. Our consideration of the 2014 volume requirements for advanced biofuels and total renewable fuel is presented in Section IV.

*B. Cellulosic Biofuel Volume Assessment for 2014*

In order to project cellulosic biofuel production for 2014, we have tracked the progress of several dozen potential cellulosic biofuel production facilities. As for the 2013 annual volumes, we have focused on facilities with the potential to produce commercial volumes of cellulosic biofuel rather than small R&D or pilot scale facilities as the larger commercial scale facilities are much more likely to generate RINs for the fuel they produce and the volumes they produce will have a far greater impact on the cellulosic biofuel standard for 2014. From this list of facilities we used publically available information, as well as information provided by DOE, EIA, and USDA, to make a preliminary determination of which facilities are the most likely candidates to produce cellulosic biofuel and generate cellulosic biofuel RINs in 2014. Each of these companies was investigated further in order to determine the current status of its facilities and its likely cellulosic biofuel production and RIN generation volumes for the coming years. Information such as the funding status of these facilities, current status of the production technologies, announced construction and production ramp-up periods, and annual fuel production targets were all considered when we spoke with representatives of each company to discuss cellulosic biofuel target production levels for 2014. Throughout this process EPA has been in contact with EIA to discuss relevant information.

For each company included in our 2014 volume projections EPA has established a range of potential production volume such that it is possible, but highly unlikely, that the actual production will be above or below the range.[7] The low end of the range for each company is designed to represent the volume of fuel EPA believes each company is likely to produce if they are unable to begin fuel production on their expected start-up date and/or experience challenges that result in reduced production volumes or a longer than expected ramp-up period. Experience to date with cellulosic biofuel production facilities is that historically they have been unable to achieve announced start-up dates and production volumes in their first few years of expected production. To project a low end of the range of production volumes, therefore, we must consider the likely minimum volume of fuel new facilities are likely to produce if they experience similar delays and setbacks. The low end of the range for any facilities that have not yet begun producing cellulosic biofuel is set at zero in our assessment. This reflects the uncertainties related to these facilities' start-up dates, the possibility that any remaining construction and commissioning timelines may be delayed, and the possibility that initial fuel volumes are likely to be small.

If a facility has already begun production any uncertainty related to its start-up date is no longer relevant and the remaining uncertainty primarily relates to the facility's ability to achieve steady state production and target yields as it progresses towards production rates that reflect the facility's nameplate capacity. For these facilities, production history is a significant factor in establishing the low end of the projected production range. It is important to note that the low end of the range does not represent a worst-case scenario. The worst-case scenario for any of these facilities is zero, as it is always possible that extreme circumstances or natural disasters may result in extended delays, project cancellation, or liquidation. While not denying this possibility for any of the facilities included in our projections, several have made sufficient progress that we believe a non-zero value for the low end of the range is appropriate. For these facilities we believe it is highly unlikely that the production volume will fail to exceed the low end of their projected production range in 2014. Further discussion on the basis for the low end of the projected production range for each facility is included in the company descriptions in the following sections.

To determine the high end of the range of expected production volumes for each company we considered a variety of factors, including company history, expected start-up date and ramp-up period, facility capacity, and others mentioned above. As a starting point, EPA calculated a production volume using the expected start-up date and facility capacity assuming our best-case scenario benchmark of a six-month straight-line ramp-up period. Any production volumes that exceeded this

[6] As of July 31, 2013, 215,044 RINs that can be used to fulfill the cellulosic biofuel standard (D3 and D7 RINS) have been generated.

[7] For the purposes of the Monte Carlo simulation, discussed in more detail later, this range will be treated as representing the 90% confidence interval.

volume were not considered to be credible, even for the high end of the range of expected production volumes. If the production estimate EPA received from a company was lower than the volume calculated using the methodology above, EPA used the company production targets instead. In some cases these volumes were discounted further based on the history of these companies or EPA's engineering judgment. More information on the process used to project the high end of the range of expected production volumes for each company can be found below. This process is similar to the process used in the 2013 standards Notice of Proposed Rulemaking (NPRM) to calculate the expected production for each company.

We believe our range of projected production volumes for each company represents the range of what is likely to actually happen for each company. A brief description can be found below for each of the companies we believe will produce cellulosic biofuel and make it commercially available in 2014. We will continue to gather more information to help inform our decision regarding the cellulosic biofuel volume to be required for 2014 in the final rule. In the sections that follow, we first discuss domestic cellulosic biofuel production facilities with an approved RIN generating pathway, followed by facilities with pathways that have been proposed or are currently being evaluated by EPA, and finally foreign cellulosic biofuel producers.

EPA has determined a range of potential production volumes for each company rather than a single value as a range better reflects the uncertainty associated with the production from each company. Additionally, there are a large number of companies that EPA must assess and aggregate to produce a single national volume covering the entire cellulosic biofuel industry. We believe that our projected production volume for the cellulosic biofuel industry as a whole is more accurate if it is done in such a way as to reflect the uncertainty associated with each of the companies that contribute to the projection. As discussed in more detail in Section II.C below, EPA is using a Monte Carlo simulation as a tool to combine our production projections for each individual company to determine a reasonable range of cellulosic biofuel production in 2014 for the entire industry in a way that reflects the uncertainty across the full suite of facilities. This projected range provides a basis for public comment and helps to inform our ultimate decision on the single value for the final rule that best represents the projected volume of cellulosic that will be available in 2014. Alternative methods to combine our production projections are discussed further in Section IV.

1. Potential Domestic Producers with Approved Pathways

The companies and facilities discussed in this section all have the potential to produce cellulosic biofuel for use as transportation fuel, heating oil, or jet fuel in the United States in 2014. Both INEOS Bio and KiOR began producing cellulosic biofuel at commercial-scale in 2013. The remaining seven are in various stages of construction. All seven of these facilities project the successful completion of construction of commercial scale facilities and initial fuel production in 2014. The strong financial incentive provided by the cellulosic RINs, combined with the fact that all these facilities are located in the United States and intend to use approved pathways, give us a high degree of confidence that any fuel they produce will also generate corresponding cellulosic biofuel RINs.[8]

In order to generate RINs, each of these companies must register under the RFS program and comply with all applicable recordkeeping and reporting requirements. This includes using an approved RIN-generating pathway and verifying that their feedstocks meet the definition of renewable biomass.

Abengoa

Abengoa, a large international biofuels company, has developed an enzymatic hydrolysis technology to convert corn stover and other agricultural waste feedstocks into ethanol. After successfully testing and refining their technology at a pilot scale facility in York, Nebraska as well as in a demonstration-scale facility in Salamanca, Spain, Abengoa is now working towards the completion of their first commercial scale cellulosic ethanol facility in Hugoton, Kansas. After successfully proving their technology at commercial scale in Hugoton, Abengoa currently plans to construct additional similar cellulosic ethanol production facilities, either on greenfield sites or co-locating these new facilities with their currently existing starch ethanol facilities around the United States.

Abengoa has contracts in place to provide the majority of feedstocks necessary for the Hugoton facility for the next 10 years and successfully completed their first biomass harvest in the fall of 2011. Construction at this facility, which began in September 2011, is expected to take approximately two years and be completed in the fourth quarter of 2013. All of the major process equipment for this project has been purchased and all of the required permits for construction have been approved. Abengoa's Hugoton facility is being partially funded by a $132 million Department of Energy (DOE) loan guarantee.

When completed, the Hugoton plant will be capable of processing 700 dry tons of corn stover per day, with an expected annual ethanol production capacity of approximately 24 million gallons. Abengoa plans to begin producing fuel at the facility in January 2014, shortly after completing construction in late 2013, and to be producing fuel at rates near the nameplate capacity by the end of the second quarter of 2014. They are currently projecting 17–20 million gallons of cellulosic ethanol production from this facility in 2014.[9] This range of volumes is consistent with the 18 million gallons EPA would project if we assume production starts on January 1, 2014 and use the six-month ramp-up period as a benchmark best case scenario for new cellulosic biofuel production facilities. To date construction at the Abengoa facility has proceeded as expected and EPA has no reason to believe this facility is less likely to achieve their production targets than any other new first-of-a-kind cellulosic biofuel facility. EPA is therefore using 18 million gallons of cellulosic ethanol as the high end of the projected production range from Abengoa in todays proposed rule. For the low end of the production range, EPA is projecting a volume of 0 gallons, consistent with our projections for all facilities that have not yet begun producing commercial volumes of cellulosic biofuel. This significantly reduced volume reflects the fact that no commercial scale cellulosic biofuel facility has yet been able to achieve its target date for the first production of fuel. Any delay in the start-up date of this facility would have a significant negative impact on production in 2014 and may result in production being delayed until 2015.

[8] In 2012, approximately 20,000 gallons of cellulosic biofuel produced in the US was exported to Brazil to be used for promotional purposes. We believe the circumstances surrounding this export of cellulosic biofuel were unique, including significant investment in the company that produced the fuel by Petrobras, and are unlikely to be repeated by the companies included in future years.

[9] Email from Chris Standlee, Executive Vice President of Institutional Affairs, Abengoa to Dallas Burkholder, US EPA. Received June 26, 2013.

Cool Planet Biofuels

Cool Planet Biofuels has developed a process to convert a variety of forms of cellulosic biomass into a renewable gasoline product. Their process uses pressure and heat to convert the cellulosic biomass to a hydrocarbon stream in a biomass fractionator which is then upgraded using proprietary catalysts into a renewable gasoline product. Cool Planet Biofuels plans to deploy relatively small scale production units capable of producing 10 million gallons of fuel per year that can be located near readily available sources of cellulosic biomass. In December 2012 Cool Planet Biofuels began producing fuel from their 400,000 gallon per year demonstration scale facility that is currently being used for testing purposes.

Cool Planet Biofuels plans to begin producing fuel at their first commercial scale unit, with a nameplate capacity of 10 million gallons per year by the end of 2014. The location of this facility has not yet been announced, and it is unclear whether Cool Planet Biofuels has raised sufficient funds for the construction of this facility. Cool Planet Biofuels claims that the very short construction time they anticipate for their facility relative to cellulosic biofuel production facilities of similar size, which generally take at least two years to build, is made possible by their use of very little novel equipment. The majority of the facility is composed of units already used in commercial operation in other applications that will be purchased from vendors and assembled by Cool Planet Biofuels. The facility will be constructed on cargo container skids and then transported to the fuel production site.

EPA believes that it may be possible for Cool Planet Biofuels to produce cellulosic biofuel from their first commercial scale production facility in 2014, but any production from this facility is highly uncertain. Historically the construction of cellulosic biofuel production facilities has taken multiple years, with delays to the initial construction schedules common. Cool Planet's unique construction plan may allow for a reduced construction timeframe; however we do not believe it would be appropriate to rely on this in projecting available volumes of cellulosic biofuel in 2014. We have therefore not included any volume from Cool Planet Biofuels in our projection of the potentially available volume of cellulosic biofuel in 2014 in today's proposal.

DuPont

DuPont has developed an enzymatic process to convert corn stover into cellulosic ethanol. DuPont has invested hundreds of millions of dollars to develop this technology and since 2009 has operated a small demonstration scale facility in Vonore, Tennessee. In addition to developing technology for converting cellulosic biomass to ethanol, DuPont has been working with corn producers, equipment manufacturers, and Iowa State University to develop expertise in the collection, transportation, and storage of the biomass feedstock for their cellulosic ethanol facilities. On March 29, 2013 DuPont signed an agreement with USDA to promote the sustainable harvesting of feedstocks for cellulosic biofuel facilities.

On November 30, 2012 DuPont began the construction of their first commercial scale cellulosic ethanol facility in Nevada, Iowa. When completed, this facility will have a nameplate production capacity of 30 million gallons of cellulosic ethanol per year. DuPont currently plans to achieve mechanical completion at this facility in June 2014 and to begin production in the second half of 2014. They are currently projecting the production of approximately 3 million gallons of cellulosic ethanol from this facility in 2014; however they acknowledge that even slight delays in their expected construction timeline could have significant impacts on their fuel production in 2014. Using EPA's best-case benchmark of a six month straight-line ramp-up period assuming a production startup date of October 1, 2014 would result in an expected production of approximately 2 million gallons in 2014. Due to the start-up date that is late in the year, however, even a relatively minor delay in the construction and commissioning timeline or unforeseen challenges in start-up would result in no production from this facility in 2014. We have projected a range or 0–2 million gallons of cellulosic biofuel from DuPont's Nevada, Iowa facility in 2014.

Fiberight

Fiberight uses an enzymatic hydrolysis process to convert the biogenic portion of separated municipal solid waste (MSW) and other waste feedstocks into ethanol. They have successfully completed five years of development work on their technology at their small pilot plant in Lawrenceville, Virginia. In 2009 Fiberight purchased an idled corn ethanol plant in Blairstown, Iowa with the intention of making modifications to this facility to allow for the production of 6 million gallons of cellulosic ethanol per year from separated MSW and industrial waste streams. These modifications were scheduled to be completed in 2011, but difficulties in securing funding have resulted in construction at this facility being delayed. In January 2012 Fiberight was offered a $25 million loan guarantee from USDA. Closing on this loan would provide substantially all of the remaining funds required for Fiberight to complete the required modifications at their Blairstown facility. Additional construction will be required at this facility before the production of cellulosic biofuel can begin, and the company expects that this construction will take approximately 6 months to complete. Additionally, Fiberight's waste separation plan for this facility was approved in June 2012 allowing Fiberight to generate RINs for the cellulosic ethanol they produce using separated MSW as a feedstock. Because of the uncertainty surrounding Fiberight's funding status, the lack of progress towards the completion of the modifications at their Blairstown, Iowa facility, and their history of production delays EPA is not including any volume from Fiberight in today's proposal.

INEOS Bio

INEOS Bio has developed a process for producing cellulosic ethanol by first gasifying cellulosic feedstocks into a synthesis gas (syngas) and then using naturally occurring bacteria to ferment the syngas into ethanol. In January 2011, USDA announced a $75 million loan guarantee for the construction of INEOS Bio's first commercial facility to be built in Vero Beach, Florida. This loan was closed in August 2011. This was in addition to the grant of up to $50 million INEOS Bio received from DOE in December 2009. At full capacity, this facility will be capable of producing 8 million gallons of cellulosic biofuel as well as 6 megawatts (gross) of renewable electricity from a variety of feedstocks including food and yard waste, agricultural residues, slash and pre-commercial thinnings, and tree residues from tree plantations.[10] The facility also plans to use a limited quantity of separated MSW as a feedstock after initial start-up.

On February 9, 2011, INEOS Bio broke ground on this facility. INEOS Bio

[10] Both slash and pre-commercial thinnings and tree residue from tree plantations must come from non-federal forestland to qualify as a feedstock in the RFS program. Additionally slash and pre-commercial thinnings must come from land that is not ecologically sensitive forest land.

completed construction on this facility in June 2012 and began full commissioning of the facility. In August 2012 INEOS Bio received approval from EPA for their yard waste separation plan and successfully registered their Vero Beach, FL facility under the RFS program. In October 2012 the facility began producing renewable electricity. INEOS Bio entered the start-up phase of cellulosic ethanol production in November 2012. During this phase the facility was not run continually, as facility modifications continued to be made; however, a small volume of cellulosic ethanol was successfully produced. On July 31, 2013, INEOS Bio announced they had begun producing cellulosic ethanol at commercial scale from their Vero Beach facility. INEOS Bio currently projects cellulosic ethanol production at this facility to be 4–5 million gallons in 2013. As this volume is less than what would be projected using our best-case ramp-up benchmark we believe it is an appropriate volume to represent the upper end of INEOS Bio's potential production range for 2014.

There is, however, significant uncertainty in the ability of this facility to achieve these production volumes in 2014. The facility has not yet reached production rates consistent with its projected production volume, and production ramp-up could take longer than expected. INEOS Bio also experienced several setbacks to production related to weather-caused power losses at the facility. While they are working to protect against these issues in the future by enabling the facility to operate in a self-sustaining mode, the possibility of future interruption due to serious weather events will still exist. For this proposed rule we are projecting a production range of 2–5 million gallons of cellulosic ethanol from INEOS Bio's Vero Beach facility in 2014. The low end of the range accounts for the possibility of both an extended ramp-up period and interruptions to production continuing into 2014.

KiOR

KiOR is working to commercialize a technology capable of converting biomass to a biocrude using a process they call Biomass Fluid Catalytic Cracking (BFCC). BFCC uses a catalyst developed by KiOR in a process similar to Fluid Catalytic Cracking currently used in the petroleum industry. The first stage of this process produces a renewable crude oil which is then upgraded to produce primarily gasoline, diesel, and jet fuel as well as a small quantity of fuel oil, all of which are nearly identical to those produced from petroleum.

KiOR's first commercial scale facility is located in Columbus, Mississippi and is capable of producing approximately 11 million gallons of gasoline, diesel, and jet fuel per year. Construction on this facility began in May 2011 and was completed in September 2012. This facility is funded, in large part, with funds acquired through private equity raises and supplemented by KiOR's $150 million IPO in June 2011. On March 17, 2013 KiOR generated their first cellulosic biofuel RINs from this facility. KiOR initially announced that they expected the start-up period at their Columbus facility to last 9–12 months, during which time they estimate fuel production will average 30%–50% of the facility capacity and production rates at or near nameplate capacity following. On August 8, 2013 KiOR reduced its production targets for 2013 from 3–5 million gallons to 1–2 million gallons. KiOR has feedstock supply agreements in place to supply all of the required feedstock for their Columbus facility with slash and pre-commercial thinning. They also have off-take agreements with several companies for all of the fuel that will be produced.

In today's proposal we are projecting a production range of 0–9 million ethanol-equivalent gallons in 2014 from KiOR's Columbus, MS facility. The high end of our proposed production projection (5.5 million actual gallons or 9 million ethanol-equivalent gallons) has been calculated assuming this facility produces at an average rate of 50% of nameplate capacity throughout 2014. We believe this reduced volume is appropriate given the low production volumes KiOR has achieved to date and KiOR's statements, in an August 8, 2013 conference call discussing their second quarter performance, that they had not yet begun focusing on increasing the efficiency and yields of the facility. The low end of the range (0 million gallons) reflects uncertainty surrounding KiOR's future production levels.

LanzaTech

LanzaTech has developed a process for the production of ethanol from feedstock streams that contain carbon monoxide. The LanzaTech process can utilize industrial waste gas streams or syngas produced from the gasification of agricultural residues, woody biomass, or other cellulosic feedstocks.[11] These gas streams are dispersed into a liquid medium where they are converted into ethanol or other chemicals by LanzaTech's proprietary microbes. LanzaTech is currently using this technology at two demonstration scale facilities in China, producing ethanol from waste gasses at steel mills in partnership with Baosteel and Capital Steel.

On January 3, 2012 LanzaTech purchased the former Range Fuels facility in Soperton, Georgia. LanzaTech is currently in the process of assessing the equipment in place at this facility. After making any necessary modifications to the existing gasifiers they plan to install units to allow for the production of ethanol from syngas produced from the gasification of local woody biomass. LanzaTech believes the current production capacity of the gasifiers when used in combination with their ethanol producing microbes is approximately 4–6 million gallons per year, with the potential for further expansion to allow for the production of 20–30 million gallons per year at this site. At this point, however, LanzaTech is not projecting initial ethanol production from this facility until late 2014 or early 2015. EPA has therefore not included any volume from LanzaTech in our cellulosic biofuel projections in this proposed rule.

Poet

Poet has developed an enzymatic hydrolysis process to convert cellulosic biomass into ethanol. Poet has been investing in the development of cellulosic ethanol technology for more than a decade and began producing small volumes of cellulosic ethanol at pilot scale at their plant in Scotland, South Dakota in late 2008. In January 2012, Poet formed a joint venture with Royal DSM of the Netherlands, called Poet-DSM Advanced Biofuels, to commercialize and license their cellulosic ethanol technology.

The joint venture's first commercial scale facility, called Project LIBERTY, will be located in Emmetsburg, Iowa. This facility is designed to process 770 dry tons of corn cobs, leaves, husks, and some stalk per day into cellulosic ethanol. The facility is projected to have an annual production of approximately 25 million gallons per year. In anticipation of the start-up of this facility, Poet constructed a 22-acre biomass storage facility and had its first

[11] RIN generation would be limited to fuels produced using approved sources of biomass such as agricultural residue, tree residue from a tree plantation, or slash and pre-commercial thinnings. LanzaTech would be required to meet all recordkeeping and reporting requirements to demonstrate the feedstock is renewable biomass sourced from land that meets all of the land use requirements of the RFS program.

commercial harvest in 2010, collecting 56,000 tons of biomass.

Site prep work for Project LIBERTY began in the summer of 2011, and vertical construction of the facility began in the spring of 2012. Poet was awarded a $105 million loan guarantee offer for this project from DOE in July 2011, but with the joint venture it decided to proceed without the loan guarantee. This project is expected to be completed in the first half of 2014 and will be followed by a commissioning period before the plant begins cellulosic ethanol production. Poet currently projects that production from Project LIBERTY will be between 7 and 12 million gallons of cellulosic ethanol in 2014. Using the six month best-case ramp-up period with production beginning on July 1, 2014 would result in a volume projection of 6 million gallons from this facility. In today's proposed rule, EPA is therefore setting the high end of Poet's projected production range at 6 million gallons of cellulosic ethanol. The low end of the projected production range for Poet's Project LIBERTY is 0 gallons in 2014. This number reflects the fact that any significant delay in the start-up date or difficulties encountered in the commissioning or start-up phases of production are likely to result in little to no production from this facility in 2014. While EPA has no reason to believe this facility will be any more prone to these types of challenges than any other commercial scale cellulosic biofuel production facility, our experience suggests that these types of delays are common and should be considered when projecting the low end of the range for production volume in 2014.

Sweetwater Energy

Sweetwater Energy has also developed a technology for converting cellulosic biomass, primarily agricultural residues and woody biomass, to cellulosic sugars. Sweetwater Energy uses a modular approach, building relatively small facilities near the source of feedstock and transporting the sugars they produce to a larger facility to be converted into renewable fuels or chemicals. They currently have two arrangements in place with corn ethanol facilities in the United States to provide cellulosic sugars in sufficient quantity for the production of 3.6 million gallons of cellulosic ethanol from each of these facilities. Both of Sweetwater Energy's cellulosic sugar production modules are scheduled to begin production in the summer of 2014. If both these facilities begin producing sugars that are converted to cellulosic biofuel on July 1, 2014, our best case scenario benchmark six month straight-line ramp-up period would project a volume of 2 million ethanol-equivalent gallons. At this time, however, cellulosic RINs would not be able to be generated for any fuel produced using Sweetwater Energy's cellulosic sugars since the existing RFS registration regulations were not designed to allow the subdivision of processes between multiple facilities. Until this is resolved, fuel production processes of this type will not be able to generate RINs. We therefore have not included any volume from Sweetwater Energy in our projections of cellulosic biofuel for 2014.

Ensyn

Ensyn has developed a technology called Rapid Thermal Processing (RTP) that uses heat to thermally crack carbon based feedstocks into a liquid bio-oil product they call renewable fuel oil (RFO). This conversion takes place in less than two seconds and is similar to the fluid catalytic cracking (FCC) process used in many refineries. Ensyn is currently using this technology in two commercial facilities located in Wisconsin and Ontario, Canada to produce renewable chemicals, food additives, and heating oil. They estimate that they have up to 3 million gallons of additional capacity at these two facilities that could be utilized if the fuel were eligible to generate RINs under the RFS program as home heating oil. This facility has a history of consistent production and we therefore believe this projection of 3 mill gal, or 5 million ethanol-equivalent gallons, is an appropriate number to use as the high end of the projected range.

Until recently the RFS regulations required that to qualify as ''heating oil'' for which RINs may be generated the fuel must be #1 diesel fuel, #2 diesel fuel, or any non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or motor vehicle, nonroad, locomotive or marine diesel fuel (MVNRLM). On October 22, 2013, EPA finalized a rule to amend this definition to include:

> A fuel oil that is used to heat interior spaces of homes or buildings to control ambient climate for human comfort. The fuel oil must be liquid at 60 degrees Fahrenheit and 1 atmosphere of pressure, and contain no more than 2.5% mass solids.[12]

[12] 78 FR 62462.

This amendment allows the RFO produced by Ensyn to qualify for RINs if it were used to heat buildings where people live, work, recreate, or conduct other activities and it meets the other required components of the proposed definition. However, even if the fuel produced using the RTP process meets the new definition, Ensyn still faces several challenges to generating cellulosic biofuel RINs. Ensyn must still secure approved sources of renewable feedstock for their existing production facilities, increase production at these facilities, and find customers willing to make the modifications necessary to use Ensyn's RFO as home heating oil. Any of these steps could result in delays in the increased production or qualifying use of RFO until 2015. For this proposal EPA is projecting a range of production of 0–3 million gallons (0–5 million ethanol-equivalent gallons) from Ensyn's facilities in 2014. This volume has not been included in EPA's primary projection of cellulosic biofuel projection for 2014 due to the outstanding issues mentioned above, but has been considered in our projection of all potentially available cellulosic biofuel, including companies without existing pathways for generating cellulosic biofuel RINs. In light of the recent amendments to the home heating oil definition, EPA will review this projection and make adjustments as necessary in the final rule.

2. Potential Domestic Producers without Existing Pathways

In addition to the facilities discussed above, there are a number of companies with the potential to produce cellulosic biofuel from domestic facilities in 2014 from pathways that have not been approved for RIN generation by EPA. Some of these pathways were addressed in a notice of proposed rulemaking published by EPA on June 14, 2013, while others are currently being evaluated by EPA. As the companies discussed in this section do not yet have approved RIN generating pathways for the fuels they plan to produce, there is additional uncertainty regarding RIN production from them in 2014.[13] Nevertheless, if the pathways are approved by EPA these facilities represent a significant potential source of cellulosic biofuel. The ranges projected for each company reflect only the uncertainty associated with

[13] At the time of this proposal, EPA has finalized changes to the home heating oil definition but has not yet completed our determination of whether or not the fuels discussed in this section meet all of the requirements to generate cellulosic biofuel RINs.

production volumes, assuming pathway approval occurs.[14] EPA will decide whether or not to include any volume from these pathways based on the status of these pathways and the progress made by the companies towards commercial cellulosic biofuel production at the time of the final rule.

Compressed Natural Gas (CNG) and Liquified Natural Gas (LNG) Producers

One of the new pathways proposed by EPA for the production of cellulosic biofuel is for the production of CNG or LNG from landfill biogas if used as a transportation fuel. The production potential for this type of cellulosic biofuel is very large with many landfills currently capturing biogas. The use of CNG and LNG as a transportation fuel in 2014 is expected to be approximately 700 million ethanol-equivalent gallons.[15] To generate RINs for landfill biogas, however, companies must be able to demonstrate that any fuel for which they generate RINs is used as transportation fuel. This can be done by fueling vehicles with CNG/LNG onsite or through contractual mechanisms.

In this proposed rule, we are projecting a production range of 35–54 million ethanol-equivalent gallons from landfill biogas in 2014. The high end of the range represents the actual peak capacity of all of the facilities that produced advanced RINs from landfill biogas while the low end represents the current production rate of advanced biofuel from landfill biogas. In the case of CNG and LNG from landfill biogas, we believe a different methodology for projecting the high end of the production range is appropriate as the uncertainties surrounding RIN generation are significantly different. The only change at issue in the proposal to approve this pathway for the generation of cellulosic biofuel RINs is a change in the type of RIN that is generated, allowing for the generation of cellulosic biofuel instead of advanced biofuel RINs based on new information of the composition of the feedstock. In this case production facilities already exist and are already capturing landfill biogas at or near their registered capacities. Similarly, the amount of CNG and LNG currently being used as transportation fuel far exceeds the combined production capacity of all of the registered facilities. RIN generation is therefore limited by the companies' ability to demonstrate the use of the biogas as a transportation fuel.[16] As part of the registration process for the generation of advanced biofuel RINs, each of these facilities submitted documentation that included contracts with parties capable of using CNG/LNG as transportation fuel who had access to the same common carrier pipeline network as the biofuel producers.

We believe the sum of the actual peak capacities of all of the facilities that produced advanced biofuel RINs from landfill biogas in 2013 is an appropriate volume to use for the high end of the projected production range. It is also the case, however, that these facilities would appear to have the capability to realize value from advanced RIN production if they were to produce at their facility capacity and are not currently doing so. There may be additional factors that EPA is unaware of at this time that is limiting production. To account for this, we are setting the low end of the range for the production of cellulosic RINs from CNG/LNG produced from landfills equal to 35 million gallons, the current production rate when projected over a full year.

Edeniq

Edeniq has developed a proprietary process that would allow corn ethanol producers to generate cellulosic ethanol from corn kernel fiber at the producers' existing production facilities. Their process involves the addition of the Cellunator™, a proprietary milling technology designed to increase the uniformity of the feedstock particles, along with a unique combination of enzymes to convert the cellulosic material in the corn kernel into sugars and ultimately cellulosic ethanol. Edeniq claims that their technology would not only allow corn ethanol producers to produce cellulosic ethanol from low value feedstock already present in their facility, but also would increase the yields of ethanol produced from starch by 2–4%. Several commercial plants are currently using the Cellunator technology to increase their yields of ethanol from starch. Edeniq has been testing their technology, including both the Cellunator and the additional enzymes, at a demonstration scale facility in Visalia, California since June 2012 and announced in May 2013 that they had successfully completed a trial run at this facility with a continuous run time of greater than 1000 hours.

Several plants are evaluating Edeniq's proprietary system to produce cellulosic ethanol from corn kernel fiber. These evaluations have included commercial scale trials. If the pathway for the production of cellulosic ethanol from corn kernel fiber is approved, these facilities would be in position to begin generating cellulosic RINs shortly after approval. Other facilities currently using the Cellunator would only have to make minor modifications to their operations, including the addition of Edeniq's suite of enzymes to produce cellulosic ethanol. Edeniq currently projects approximately 7 million gallons of cellulosic ethanol production using their technology in 2014 and has provided EPA with detailed information on the expected production volumes and dates of initial cellulosic ethanol production for facilities expected to utilize their technology. In today's proposed rule, we have included a projected production volume of 0–7 million gallons. The low end of this range reflects the fact that Edeniq's technology has not yet been used to generate commercial scale volumes of cellulosic biofuel. The high end of the range reflects Edeniq's own projections, which EPA has reviewed and believes are reasonable given the nature of Edeniq's technology, the deals they currently have in place, and their experience with the installation and operation of the various components of their technology. This volume is also dependent on the finalization of EPA's proposed rule clarifying that the definition of crop residue includes corn kernel fiber.

3. Potential Foreign Sources of Cellulosic Biofuel

In addition to the potential sources of cellulosic biofuel located in the United States discussed above there are several foreign cellulosic biofuel companies that may produce cellulosic biofuel in 2014. All of these facilities utilize fuel production pathways that have been approved by EPA for cellulosic RIN generation provided eligible sources of renewable feedstock are used. These companies would therefore be eligible to register these facilities under the RFS program and generate RINs for any fuel imported into the United States. Currently, however, none of these facilities have successfully completed the registration process for the RFS program. Further, demand for the cellulosic biofuels they produce is expected to be high in local markets. Production volumes from these foreign facilities have therefore not been included in our projection of potentially available volume for 2014. EPA plans to

[14] In projecting potential production volumes EPA has assumed that the pathways are all approved as of January 1, 2014. Approval subsequent to that date would reduce potential volumes, depending on the producer at issue.

[15] EIA Annual Energy Outlook 2013. Transportation Sector Energy Use by Mode and Type, Reference case.

[16] See CFR 80.1426 for requirements for generating RINs from biogas

continue to monitor the progress of these foreign facilities and may include volumes from these facilities should their plans change in the future.

Beta Renewables

Beta Renewables has developed a biochemical technology to convert cellulosic biomass into cellulosic sugars, which can then be used in the production of fuels or chemicals. Their first commercial scale facility was built in Crescentino, Italy and began producing cellulosic ethanol in commercial quantities in June 2013. This facility uses Arundo donax and wheat straw as feedstocks and has an annual production capacity of 20 million gallons of ethanol per year. Ethanol produced at this facility would be eligible to generate cellulosic RINs if Beta Renewables registers its facility and imports the cellulosic ethanol into the United States for use as a transportation fuel. Beta Renewables is also planning to build a cellulosic ethanol production facility in North Carolina. This facility is not expected to begin ethanol production in 2014, however, and has therefore not been included in our projection of available volume for 2014.

Enerkem

Enerkem plans to use a thermochemical process to produce syngas from MSW and other waste materials and then catalytically convert the syngas to methanol. The methanol can then be sold directly or upgraded to ethanol or other chemical products. Their first commercial scale facility in Edmonton, Alberta, Canada is scheduled to complete construction and begin producing methanol in 2013 with ethanol production following in 2014. At full capacity this facility will be capable of producing 10 million gallons of cellulosic ethanol per year. Despite their relative close proximity to the United States, Enerkem has indicated to EPA that they do not intend to export cellulosic biofuel into the United States from their Edmonton facility.

GranBio

GranBio began construction on its first commercial cellulosic ethanol production facility in São Miguel dos Campos, Brazil in December 2012. It is largely funded by a 300.3 million Reais loan from BNDES, Brazil's national social and economic development bank. This facility, which will use technology licensed from Beta Renewables, will have a nameplate capacity of 22 million gallons of ethanol per year and is scheduled to be completed in the first half of 2014. The feedstock for this facility will be excess bagasse not currently used to provide process heat or electricity at sugarcane ethanol production facilities.

Raizen

Raizen, a joint venture between Royal Dutch Shell and Cosan SA, is planning to build a 10.5 million gallon per year cellulosic ethanol plant attached to their Costa Pinto sugarcane mill in Piracicaba, Brazil. This facility will use a biochemical conversion technology developed by Iogen and Codexis to convert sugarcane bagasse to ethanol. The facility is currently scheduled to complete construction in the second half of 2014 and if successful will be the first of up to 8 cellulosic ethanol production facilities built by Raizen in Brazil.

4. Summary of Volume Projections for Individual Companies

The information we have gathered on cellulosic biofuel producers, described above, allows us to project a range of production volumes for each facility in 2014. As in 2013, we have once again focused on commercial scale cellulosic biofuel production facilities. This focus is appropriate, as the volume of cellulosic biofuel produced from R&D and pilot scale facilities is quite small in relation to that expected from the commercial scale facilities for which we have projected volumes in 2014 and historically R&D and demonstration scale facilities have not generated RINs for any fuel they have produced.

In 2014 as many as twelve domestic cellulosic biofuel production facilities have the potential to produce fuel at commercial scale. Each of these facilities is discussed above, and the projected available volumes for each are summarized in Table II.B.4–1 below. Two of the companies that have the potential to produce cellulosic biofuel in 2014, INEOS Bio and KiOR, are currently producing cellulosic biofuel. The production of RIN generating fuel from the remaining 10 facilities is more uncertain as these facilities have either yet to complete construction or do not currently have a valid pathway for generating cellulosic RINs.

We have also identified four foreign facilities with the potential to produce cellulosic ethanol in 2014. At this point we do not believe any of these facilities are likely to export any of the fuel they produce to the United States. We will continue to monitor the status of these facilities and may include volume from them in our final rule if appropriate. We ask for comment on this analysis and are especially interested in data that would support cellulosic volume estimates.

TABLE II.B.4–1—PROJECTED AVAILABLE CELLULOSIC BIOFUEL FOR 2014

| Company name | Location | Feedstock | Fuel | Design capacity (MGY) [a] | First production | 2014 Projected available volume (ethanol-equivalent) |
|---|---|---|---|---|---|---|
| **Domestic Facilities; Approved Pathways** | | | | | | |
| Abengoa | Hugoton, KS | Corn Stover | Ethanol | 24 | 1st Quarter 2014 | 0–18 |
| CoolPlanet Biofuels | TBD | TBD | Gasoline | 10 | 2nd Half 2014 | 0 |
| DuPont | Nevada, IA | Corn Stover | Ethanol | 30 | 2nd Half 2014 | 0–2 |
| Fiberight | Blairstown, IA | MSW | Ethanol | 6 | Unknown | 0 |
| INEOS Bio | Vero Beach, FL | Vegetative Waste | Ethanol | 8 | 3rd Quarter 2013 | 2–5 |
| KiOR | Columbus, MS | Wood Waste | Gasoline and Diesel. | 11 | 1st Quarter 2013 | 0–5.5 (0–9) |
| LanzaTech | Soperton, GA | Wood Waste | Ethanol | 5 | 1st Half 2015 | 0 |
| Poet | Emmetsburg, IA | Corn Stover | Ethanol | 25 | 1st Half 2014 | 0–6 |
| Sweetwater Energy | Various | Ag. Residue | Ethanol | 7 | 1st Half 2014 | 0 |

TABLE II.B.4–1—PROJECTED AVAILABLE CELLULOSIC BIOFUEL FOR 2014—Continued

| Company name | Location | Feedstock | Fuel | Design capacity (MGY) [a] | First production | 2014 Projected available volume (ethanol-equivalent) |
|---|---|---|---|---|---|---|
| **Domestic Facilities; All Potential Producers** | | | | | | |
| Ensyn | Stanley, WI | Wood Waste | Heating Oil | 3 | 2007 | 0–3 (0–5) |
| CNG/LNG Producers. | Various | Biogas from Landfills. | CNG/LNG | Various | N/A | 35–54 |
| Edeniq | Various | Corn Kernel Fiber | Ethanol | Various | 1st Half 2014 | 0–7 |
| **Foreign Facilities** | | | | | | |
| Beta Renewables | Crescentino, Italy | Wheat straw, Arundo Donax. | Ethanol | 20 | 2Q 2013 | 0 |
| Enerkem | Edmonton, Alberta | Separated MSW | Methanol, Ethanol. | 10 | 1st Half 2014 | 0 |
| GranBio | São Miguel dos Campos, Brazil. | Bagasse | Ethanol | 22 | 1st Half 2014 | 0 |
| Raizen | Piracicaba, Brazil | Bagasse | Ethanol | 10.5 | 2nd Half 2014 | 0 |

[a] Facilities are generally designed to process a given quantity of feedstock and volume capacities may vary depending on yield assumptions.

C. Proposed Cellulosic Biofuel Volume for 2014

As discussed in the preceding sections we have used information from a variety of sources, including EIA, USDA, and the companies themselves, to determine a projected range of production of cellulosic biofuel for each company in 2014. These volumes are summarized in Table II.B.4–1 above. These volumes form the basis for our projection of cellulosic biofuel production in 2014. We do not believe, however, that a simple summation of the low end and high end of the projected production volumes for each company would result in an appropriate projected range of production volumes across the cellulosic biofuel industry. It is highly unlikely that every company will produce at or near the low end, or conversely the high end, of its range of projected production volumes. It is also the case that the production expectations within the projected ranges differ for facilities in different stages. The uncertainties associated with cellulosic biofuel production vary in both type and degree among facilities that have already begun production, those that are currently in or will soon be approaching the commissioning of their facilities, and those that are still undergoing significant construction operations.

EPA is using a Monte Carlo simulation to account for the need to aggregate across several ranges, with different producers having different production probability distributions across their expected production range. As discussed above, the high and the low end of each range represents values such that it is possible but highly unlikely that volumes would be higher or lower than this range. EPA will therefore treat these individual ranges as representing the 90% confidence interval of a distribution of possible volumes. In other words, the low end of the range for a producer would represent the 5th percentile and the high end of the range would represent the 95th percentile. This approach is consistent with EPA's judgment that, while the ranges shown in Table II.B.4–1 are intended to encompass the vast majority of possible volumes, there remains a small possibility that volumes outside of those ranges are possible. We believe it is reasonable to treat these values as a 90% confidence interval for purposes of the Monte Carlo analysis, though we request comment on treating them as a different confidence interval such as 80% or 95%.

For the purposes of the Monte Carlo analysis, EPA must also identify an uncertainty distribution for production for each facility. These distributions reflect our expectation for the most likely distribution of production volumes within the projected range when taking into account the many different uncertainties associated with the production volume from each facility. While each facility faces its own set of unique circumstances and challenges in producing cellulosic biofuels at commercial scale, many can be grouped into one of several general categories, the impact of which will vary with the progress achieved at that facility to date. One source of uncertainty in the projected production volume of a new cellulosic biofuel facility is related to the completion of the construction and commissioning phases of the facility. This includes uncertainty in the construction schedules, modifications to the design during the construction or commissioning phase, challenges encountered in scaling up the technology to commercial scale, unexpected delays or repairs due to weather events, or any of a number of other reasons. Delays of this type will result in a later than expected start-up date which may result in significantly decreased production volumes in 2014 or the start of production being delayed until 2015. The uncertainty related to delays in the completion of the construction of a facility decreases the closer the project is to completion, and is entirely irrelevant to facilities that have already begun production.

A second source of uncertainty is that associated with the ramp-up phase of new facilities. Lower than expected product yields, feedstock supply and handling challenges, contamination of chemical or biological catalysts, and a number of other issues can cause reduced production during the ramp-up phase and/or a longer than expected ramp-up period before reaching production levels that correspond to the nameplate capacity of the facility. Facilities that face these types of challenges during the ramp-up phase of production are very likely to still achieve some level of production, but that level may vary depending on the severity and duration of the challenges they face. The closer a facility is to achieving production rates that correspond to the nameplate capacity of the facility, the less likely they are to see

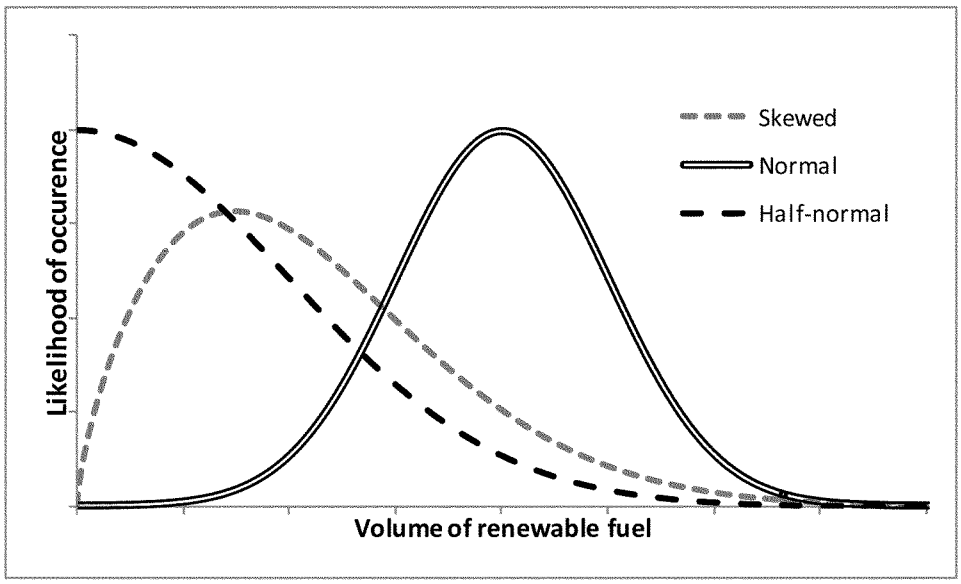
reductions in their expected production due to challenges in the ramp-up phase.

A third source of uncertainty is the ability of the facility to maintain consistent production at or near nameplate capacity after the ramp-up phase has been successfully completed. A number of factors including, but not limited to feedstock supply interruption, significant issues with feedstock quality, loss of power or other essential utilities at the facility, and interruptions in production due to accidents, operator error, or weather events could cause fuel production at a facility to decrease or cease altogether. While the uncertainty associated with these issues is never completely absent, it does decrease over time if a facility is able to consistently achieve production levels at or near nameplate capacity with few or no interruptions to production.

The degree to which these three sources of uncertainty impact expected production of cellulosic biofuel in 2014 varies greatly with the progress achieved by the facility to date. To represent this uncertainty for facilities expected to begin operations in different timeframes, we used three different standardized uncertainty distributions. The three standard curves that represent the expected production distributions from cellulosic biofuel production facilities are shown in Figure II.C–1 below. We request comment on how well these three curves represent the expected production distributions of the various cellulosic biofuel producers discussed above or if other curves may be more appropriate.

Figure II.C-1

Standardized Distributions Used to Project Aggregate Cellulosic Biofuel Production[a]




[a] The skewed distribution is based on a Weibull distribution with a shape parameter of 0.5 and a scale parameter of 1.7.

As described more fully in Section IV.B.4, we believe that these three standardized distributions provide a mechanism for representing the regions within each projected volume range where the greatest likelihood of reasonably achievable volumes lie.

Facilities that have already begun producing cellulosic biofuel in 2012 or earlier and have at least a full year of production history do not face uncertainty associated with delays in the construction and commissioning of the facility. They may, however, face some uncertainty in their ramp-up schedule relative to the progress they have achieved to date, as well as the risk of unexpected shutdown or slowdown faced by all facilities. For facilities facing these uncertainties we expect that the most likely production volume is towards the middle of the range, with decreasing production probabilities as the high and low ends of the production ranges are approached. A normal curve is appropriate for this expected production distribution. In 2014, however, there are no commercial scale cellulosic biofuel production facilities that meet these criteria.

Facilities that began producing cellulosic biofuel in 2013 no longer face uncertainty due to potential delays in the completion of construction and the commissioning of the facility. There is, however, uncertainty regarding these facilities ramp-up schedules which can have a significant impact on the production volumes from these facilities. We believe that the expected production of these facilities would be best represented by a right-skewed or Weibull curve, with the most likely production volume near, but not at, the low end of the range and the production probabilities gradually towards the high end of the range.

Facilities not expected to begin producing cellulosic biofuel until 2014 face uncertainty associated with a delay in the completion in the construction and commissioning of the facility. Given this uncertainty, we believe that the most likely production volume is at the

low end of the range with decreasing probability as the high end of the range is approached. To represent this asymmetrical uncertainty, we believe a half-normal curve is a reasonable representation of the expected production distribution from these facilities.

The type of uncertainty distribution used to represent the expected production within the projected range for each company is shown in Table II.C–1.

TABLE II.C–1—STANDARD DISTRIBUTIONS USED TO PROJECT CELLULOSIC BIOFUEL PRODUCTION IN 2014

| Company | Distribution curve | 5th Percentile volume (mill ethanol-equivalent gal) | 95th Percentile volume (mill ethanol-equivalent gal) |
|---|---|---|---|
| Abengoa | Half-Normal | 0 | 18 |
| DuPont | Half-Normal | 0 | 2 |
| INEOS Bio | Right-Skewed | 2 | 5 |
| KiOR | Right-Skewed | 0 | 9 |
| Poet | Half-Normal | 0 | 6 |
| CNG/LNG Producers | Normal | 35 | 54 |
| Edeniq | Half-Normal | 0 | 7 |
| Ensyn | Normal | 0 | 5 |

To aggregate the production distributions for each of the companies into a single distribution representing cellulosic biofuel production across the entire industry, we performed two Monte Carlo simulations in which each of the distributions was randomly sampled in an iterative fashion. Each of the distributions was sampled 3000 times and the results of all the iterations were then summed to produce a distribution for cellulosic biofuel. For the uncertainty distributions where the low end of the projected range was zero it was possible for the Monte Carlo simulation to select a negative volume for these companies.[17] Whenever negative volumes were selected in the Monte Carlo simulations these negative volumes were reset to zero.

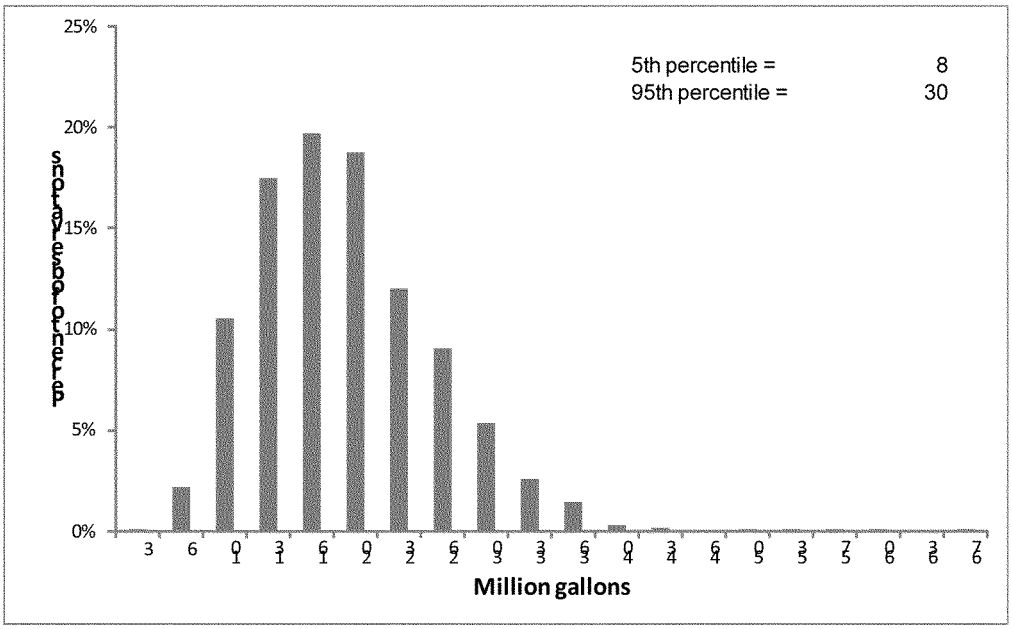
We generated two separate aggregate distributions to represent total cellulosic biofuel using the Monte Carlo process. Given the uncertainty surrounding the timing and approval of the proposed RIN-generating pathways that would be used by CNG/LNG producers, Edeniq, and Ensyn, the first aggregate distribution only included volumes from those facilities using RIN-generating pathways that have already been approved. The result of this Monte Carlo simulation forms the basis for the range of cellulosic biofuel production included in this proposal.

[17] Because the low end of each range represents the 5th percentile, negative volumes are selected approximately 5% of the time when the low end of the range is zero.

Figure II.C-2

Results of Monte Carlo Simulation for Cellulosic Biofuel Production

(Approved Pathways Only)

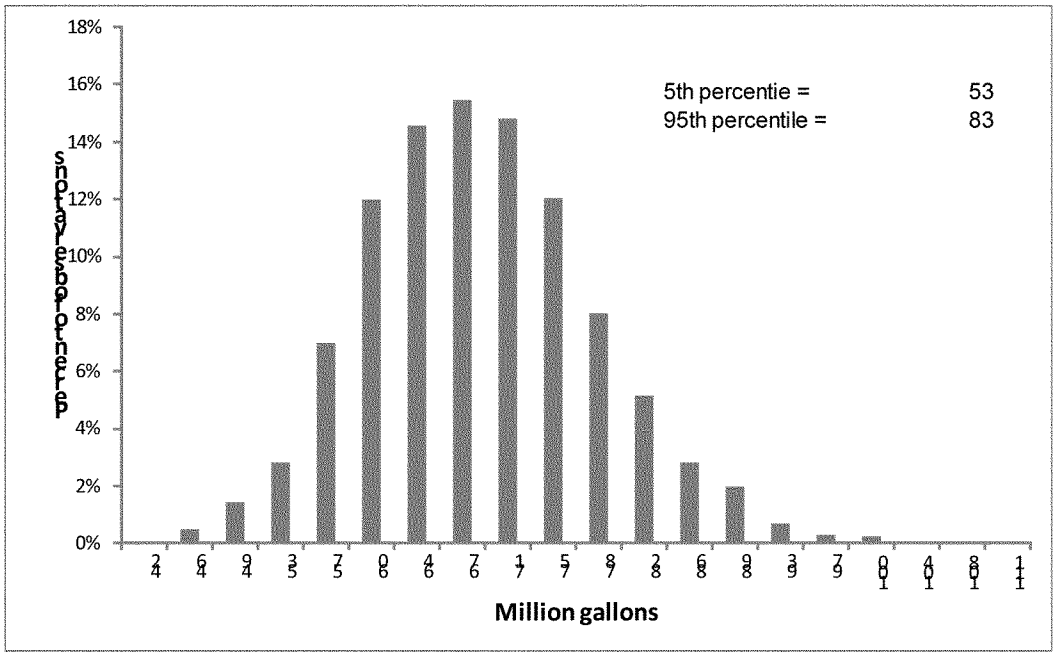



The second Monte Carlo simulation included volumes from all eight facilities for which we have projected a range of volumes in 2014. The results of this simulation would be more representative of the volume of cellulosic biofuel included in our final rule in the event that the proposed RIN-generating pathways discussed above are approved for RIN generation before the 2014 applicable volumes are finalized.

Figure II.C-3

Results of Monte Carlo Simulation for Cellulosic Biofuel Production

(All Potential Cellulosic Biofuel Producers)




In today's NPRM we are proposing a volume for the 2014 cellulosic biofuel standard of 8—30 million ethanol-equivalent gallons. This volume is expected to be comprised of 5—26 million gallons of ethanol and 0—9 million ethanol-equivalent gallons of cellulosic hydrocarbons.[18] The proposed range is derived from the 90% confidence interval of the Monte Carlo simulation that includes all the companies we expect to produce commercial volumes of cellulosic biofuel in 2014 using pathways in the current RFS regulations. As discussed in Section II.B, many factors have been taken into consideration in developing the individual company projections, such as the information from EIA, the current status of project funding, the status of the production facility, anticipated construction timelines, the anticipated start-up date and ramp-up schedule, feedstock supply, and many others. We have also used distribution curves weighted towards the low end of the expected production range for each company to account for the fact that previous projections of cellulosic biofuel production have exceeded actual production. We believe the range of volumes proposed (8—30 million ethanol-equivalent gallons) resulting from the Monte Carlo simulation is a reasonable representation of expected production in 2014 across the industry.

Our proposed range reflects EPA's best estimate of the range of cellulosic biofuel volumes that will actually be produced in 2014. In the final rule EPA will determine a single volume that represents EPA's best estimate of the volume that will actually be produced in 2014.[19] EPA invites comment on the best approach to determine a single value from a range developed using the approach described above. For example, EPA could use the mean (average value), median (50th percentile), or mode (the volume that occurs most frequently). It may also be reasonable to use a value representing higher or lower values in the distribution, such as the 25th or 75th percentile if there is reason to believe these would provide a more accurate projection of actual production in 2014.[20] We have determined the volumes represented by each of these methods and presented the values in Tables II.C–2 and II.C–3 below.

TABLE II.C–2—POTENTIAL APPROACHES TO DETERMINING THE FINAL CELLULOSIC BIOFUEL REQUIREMENT (APPROVED PATHWAYS ONLY) [a]

[million ethanol-equivalent gallons]

| | |
|---|---|
| Mean | 17 |
| 50th percentile | 16 |
| Mode | 16 |
| 25th percentile | 12 |
| 75th percentile | 21 |

[a] All volumes are ethanol-equivalent gallons

TABLE II.C–3—POTENTIAL APPROACHES TO DETERMINING THE FINAL CELLULOSIC BIOFUEL REQUIREMENT (ALL POTENTIAL CELLULOSIC BIOFUEL PRODUCERS) [a]

[million ethanol-equivalent gallons]

| | |
|---|---|
| Mean | 67 |
| 50th percentile | 67 |

[18] These volumes are also the result of our Monte Carlo simulation. Similar to the individual company production projections, the low and high ends of the ranges cannot be simply added together to calculate the high and low ends of our total cellulosic biofuel production projection in 2014. Cellulosic hydrocarbons include both cellulosic gasoline and cellulosic diesel.

[19] See *API* v. *EPA*, 706 F.3d 474 (D.C. Cir. 2013).

[20] This could be the case if there was reason to believe there was a systematic bias such that the ranges tended to over or under estimate the actual production volumes.

TABLE II.C–3—POTENTIAL APPROACHES TO DETERMINING THE FINAL CELLULOSIC BIOFUEL REQUIREMENT (ALL POTENTIAL CELLULOSIC BIOFUEL PRODUCERS) [a]—Continued

[million ethanol-equivalent gallons]

| | |
|---|---|
| Mode | 67 |
| 25th percentile | 61 |
| 75th percentile | 73 |

[a] All volumes are ethanol-equivalent gallons

In today's NPRM, we are proposing to use the mean value for the final volume requirement for cellulosic because we believe it best represents a neutral aim at the volumes that could reasonably be supplied. However, we request comment on whether one of the alternative values shown in Table II.C–2 would be more appropriate as the basis for the required volume of cellulosic biofuel in the final rule.

It is important to note that the final cellulosic biofuel standard for 2014 may be set at a volume outside the proposed range of 8–30 million ethanol-equivalent gallons. If EPA finalizes the pathways discussed in the recent proposed rulemaking [21] before the applicable volume of cellulosic biofuel for 2014 is finalized, volumes of fuel from companies intending to utilize these pathways may be included in our projected available volume for 2014 as discussed above. Foreign producers of cellulosic biofuel who inform EPA of their intent to export the fuel they produce to the United States may also be included. Finally, a variety of factors may affect our production projections for the companies considered in this proposal, including unexpected project modifications or cancellations or the inclusion of volumes of cellulosic biofuel from sources other than those listed above.

We will continue to monitor the progress of the cellulosic biofuel industry, in particular the progress of the companies which form the basis of our proposed 2014 volume projection. We expect that for the final rule there will be greater certainty on the appropriate volume of fuel that we can reasonably expect to be produced and made commercially available in 2014. We request comment on our analysis and estimates.[22]

*D. Rescission of the 2011 Cellulosic Biofuel Standards*

On January 25, 2013, the United States Court of Appeals for the District of Columbia Circuit issued its decision concerning a challenge to the 2012 cellulosic biofuel standard. The Court found that in establishing the applicable volume of cellulosic biofuel for 2012, EPA had used a methodology in which ''the risk of overestimation [was] set deliberately to outweigh the risk of underestimation.'' The Court held EPA's action to be inconsistent with the statute because EPA had failed to apply a ''neutral methodology'' aimed at providing a prediction of ''what will actually happen,'' as required by the statute. As a result of this ruling, the Court vacated the 2012 cellulosic biofuel standard, and we removed the 2012 requirement from the regulations in a previous action. Industry had also challenged the 2011 cellulosic biofuel standard by, first, filing a petition for reconsideration of that standard, and then seeking judicial review of our denial of the petition for reconsideration. This matter was still pending at the time of the DC Circuit's ruling on the 2012 cellulosic biofuel standard. Since we used essentially the same methodology to develop the 2011 cellulosic biofuel standard as we did to develop the 2012 standard, we requested, and the Court granted, a partial voluntary remand to enable us to reconsider our denial of the petition for reconsideration of the 2011 cellulosic biofuel standard. Given the Court's ruling that the methodology EPA used in developing the 2012 cellulosic biofuel standard was flawed, we have decided to grant reconsideration of the 2011 cellulosic biofuel standard, and are today proposing to rescind the 2011 cellulosic biofuel standard. If this proposal is finalized, the money paid by obligated parties to purchase cellulosic waiver credits to comply with the 2011 cellulosic biofuel standard would be refunded.

## III. Proposed National Volume Requirement for Biomass-Based Diesel in 2014 and 2015

EPA set the national volume requirement for biomass-based diesel for 2013 at 1.28 bill gal of biomass-based diesel.[23] This national volume is then used to determine the applicable percentage standard that determines the specific renewable volume obligations for refiners and importers. Subsequently, EPA received two Petitions for Reconsideration requesting that EPA reconsider the final rule setting the 2013 biomass-based diesel volume requirement at 1.28 bill gal.[24] After review and consideration of the issues raised by petitioners, EPA denied both petitions.[25]

In today's action we are proposing an applicable volume of 1.28 bill gal biomass-based diesel for 2014 and 2015. In proposing the 2015 applicable volume of biomass-based diesel, we are not at this time proposing the percentage standards that would apply to obligated parties in 2015. The percentage standards for 2015 will be proposed in a subsequent rulemaking as required by the statute once the requisite gasoline and diesel fuel volumes for 2015 are determined.

*A. Statutory Requirements*

Section 211(o)(2)(B)(i) of the Clean Air Act specifies the applicable volumes of renewable fuel on which the annual percentage standards must be based, unless the applicable volumes are waived or adjusted by EPA in accordance with the Act.[26] Applicable volumes are provided in the statute for years through 2022 for cellulosic biofuel, advanced biofuel, and total renewable fuel. For biomass-based diesel, applicable volumes are provided through 2012. For years after those specified in the statute (i.e. 2013+ for biomass-based diesel and 2023+ for all others), EPA is required under 211(o)(2)(B)(ii) to determine the applicable volume, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years for which the statute specifies the applicable volumes and on analysis of the following factors:

- The impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;
- The impact of renewable fuels on the energy security of the United States;
- The expected annual rate of future commercial production of renewable

[21] 78 FR 36042 (June 14, 2013).

[22] Since EPA is proposing to reduce the applicable volume of cellulosic biofuel under section 211(o)(7)(D), EPA will be required to make available cellulosic biofuel credits. EPA will set the price for the cellulosic biofuel credits in the final rule, using the same approach to applying the criteria in section 211(o)(7)(D)(ii) that was used in setting the price for cellulosic biofuel credits for 2013. See 78 FR 49794.

[23] 77 FR 59458 (September 27, 2012).

[24] Letter dated November 20, 2012 to Honorable Lisa Jackson from Richard Moskowitz, American Fuel & Petrochemical Manufacturers, ''Re: Petition for Reconsideration—Docket No. EPA–HQ–OAR–2010–0133. Letter dated November 26, 2012 to Honorable Lisa Jackson from Robert L. Greco, III, American Petroleum Institute, ''Re: Request for Reconsideration of EPA's Final Rulemaking '2013 biomass-Based Diesel Renewable Fuel Volume.' ''

[25] 78 FR 49411, August 14, 2013.

[26] For example, EPA may waive a given standard in whole or in part following the provisions at CAA 211(o)(7).

fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);

• The impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;

• The impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and

• The impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The statute also specifies that the applicable volume of biomass-based diesel cannot be less than the applicable volume for calendar year 2012, which is 1.0 bill gallons. The statute does not, however, establish any other numeric criteria or overarching goals for EPA to achieve in setting the applicable volumes in years after those specifically set forth in the provision.

Finally, the statute also specifies the timeframe within which these volumes must be promulgated: the applicable volumes must be established no later than 14 months before the first year for which such applicable volume will apply. We did not propose a 2014 volume for biomass-based diesel in the February 7, 2013 NPRM because at that time we were still evaluating the potential market impacts of current production levels. In order to provide sufficient time for this evaluation, we delayed our proposal for the 2014 volume requirement for biomass-based diesel. Consequently, today we are proposing volume requirements for both 2014 and 2015.

### *B. Compliance With 2013 Volume Requirement of 1.28 Billion Gallons*

In making a determination regarding the volume requirement for biomass-based diesel to propose for 2014 and 2015, we first investigated the recent historical and current circumstances in the biodiesel market. According to data collected through the EPA-Moderated Transaction System (EMTS) production of biodiesel in 2012 exceeded 1.14 bill gal.[27] This demonstrates that the industry was able to meet the applicable 2012 volume requirement of 1 bill gal. It also provides evidence that the industry will meet the 1.28 bill gal requirement in 2013. Additional volumes above 1.28 bill gal are possible in 2013, and may be used to help meet the advanced biofuel standard. Indeed current production rates in the biodiesel industry for the first seven months of 2013 were 25% above monthly production rates for the same time period in 2012 and are consistent with a total production volume of at least 1.6 bill gal for 2013.[28]

While annual production volume has been increasing, a review of EIA's Monthly Biodiesel Production Reports[29] since 2009 indicates that there has been some variability both in monthly production volume and in the number of facilities producing that volume. For example, there were significant biodiesel facility closures during the 2009 and 2010 calendar years. Since that time the overall number of biodiesel facilities in operation has stabilized and overall capacity in the biodiesel industry has remained stable from 2009–2012 at more than 2 bill gal. It is also clear that overall industry-wide utilization rates have increased during this time period from 25% in 2009 to approximately 46% in both 2011 and 2012. Thus it is clear that total production capacity at facilities already operating is above 1.28 bill gal. There are also indications that new or idle facilities have begun production in response to the 1.28 bill gal mandate for 2013. Specifically, EIA's monthly reports indicate that nine additional producers have become operational in the U.S. since the rule for 2013 biomass-based diesel was finalized.[30] The latest EIA monthly biodiesel report, available for July 2013, indicates that U.S. production was 128 million gallons in July, and came from 111 biodiesel plants in 38 states with total operating capacity of 2.1 bill gal per year.[31] As described in Section IV.B.2.b, total biodiesel production by the end of 2013 could be as high as 1.7 bill gal, and the facilities contributing to this production collectively have a capacity of well over 2 bill gal.

Further discussion of the factors we must consider in the context of the biomass-based diesel volume of 1.28 bill gallons for 2013 is contained in both the final rule adopting this level for 2013[32] and in EPA's denial of two petitions requesting the Agency reconsider the 2013 biomass-based diesel final rule.[33] As discussed in that final rule, the assessment of these factors supported a volume of 1.28 bill gallons for 2013. As we would expect that the impacts of 1.28 bill gal in 2014 and 2015 would not be materially different, we are not repeating the discussion of those analyses here. However, we specifically request data and analyses suggesting that the factors we considered in 2013 have changed significantly for 2014 or 2015.

### *C. Determination of Applicable Volume for 2014 and 2015*

The biodiesel industry has clearly demonstrated that it can produce the volumes of biomass-based diesel up to the minimum required by the statute, and that 1.28 bill gal of biodiesel is readily attainable. We have no real concerns that a level of 1.28 bill gal will be achieved effectively in 2013, and that once it is met this level of production and consumption can also be achieved in years after 2013. Production costs associated with 1.28 bill gal of biodiesel could be affected by various factors, including the expiration of the biodiesel tax credit and projected lower soy oil prices.

EPA's evaluation of the applicable volume that we should set for biomass-based diesel takes into account the context of the larger advanced biofuel and total renewable fuel volume requirements. The biomass-based diesel standard is a subset of both the advanced biofuel and total renewable fuel standards, and biomass-based diesel volumes can be used to meet all three standards. As discussed in Section IV below, we are proposing to reduce the applicable volumes of advanced biofuel and total renewable fuel. The reductions are designed to address several factors that affect achievement of

[27] Fuels and Fuel Additives 2012 EMTS Data, *http://www.epa.gov/otaq/fuels/rfsdata/2012emts.htm* (last accessed September 16, 2013).

[28] Fuels and Fuel Additives 2013 EMTS Data, *http://www.epa.gov/otaq/fuels/rfsdata/2013emts.htm* (last accessed September 16, 2013).

[29] The U.S. Energy Information Administration as part of it responsibilities under section 1508 of the 2005 Energy Policy Act, amended its ICR and has begun collecting and publishing biodiesel production information on a monthly basis including production of biodiesel in a given month, the number of plants operating and contributing to the monthly total volume by state, and their total operating capacity for the year. U.S. Energy Information Administration/Monthly Biodiesel Production Report, Form EIA–22m Monthly Biodiesel Production Survey. U.S. Energy Information Administration, Monthly Biodiesel Production Report, For 2012 data collected showed that 2012 production was 969 mil gallons, which was up from production 967 million gallons during 2011.

[30] EIA data indicates that in December 2011, after the close of the comment period, 103 biodiesel plants existed with an operating capacity of 2.1 bill gal per year. In March 2012, 104 biodiesel plants were operational and the report indicates that for the first quarter of 2012 production was up 78% over the first quarter of 2011. As EPA finalized the 2013 volume mandates in September 2012 there were 105 biodiesel producers operating in the U.S. By late November 2012 that number had increased to 112.

[31] *http://www.eia.gov/biofuels/biodiesel/production/* (last accessed September 16, 2013).

[32] 77 FR 59458 (September 27, 2012).

[33] 78 FR 49411, August 14, 2013.

the volume goals that Congress established in the statute for these categories of renewable fuel. These factors include limitations in production or importation of the necessary volumes, and factors that limit supplying those volumes to the vehicles that can consume them. These same factors impact our consideration of the biomass-based diesel volume requirement for 2014. For example, EPA considers the availability of feedstocks for production of biodiesel.

More importantly, the production and use of biomass-based diesel can be supported by both the need to comply with the required volume for biomass-based diesel as well as the need to comply with the required volume for advanced biofuel or even the volume for total renewable fuel. This provides EPA additional flexibility in considering the appropriate national volume to set for the biomass-based diesel volume requirement, as this requirement is not the only mechanism in the RFS program that can support production and use of biomass-based diesel. For example, while the applicable volume that EPA sets for biomass-based diesel will ensure that at least that volume of biomass-based diesel would be produced and used, the advanced biofuel standard provides an alternative potential source of support for production and use of additional volumes of biomass-based diesel. It does this because obligated parties have discretion whether to choose biomass-based diesel or another advanced biofuel to satisfy their advanced biofuel obligation, and because the diesel pool can accommodate considerably more than 1.28 bill gal of biodiesel. EPA believes there is value in providing obligated parties increased flexibility in how they meet their required volume obligations in 2014. As discussed in Section IV, EPA is reducing the statutory volumes of advanced biofuel and total renewable fuel based on concerns of inadequate domestic supply of these renewable fuels. Providing obligated parties additional flexibility to address future supply circumstances is of increased importance under these circumstances.

In setting the applicable volume for biomass-based diesel for 2013, EPA discussed various impacts of requiring volumes of biomass-based diesel in light of the relevant factors to be considered under CAA section 211(o)(2)(B)(ii).[34] We believe this analysis continues to be appropriate, and supports the proposed applicable volume of biomass-based diesel for 2014. In considering all of these factors, we see no need to reduce the minimum biomass-based diesel volume requirement from 2013 levels. We have a high degree of confidence that this volume of 1.28 bill gal could be achieved effectively without any real risk of production or supply problems.

At the same time, as discussed above, the volume requirement for biomass-based diesel is nested within the advance biofuel standards that we are proposing to reduce in 2014. We believe that volumes of biomass-based diesel above 1.28 bill gal can, and likely will, be produced in 2014 to meet the requirements of the advanced biofuel standard, though the degree to which this occurs will also depend on whether the biodiesel tax subsidy is extended beyond December 31, 2013. We do not expect that there would be a significant difference between additional volumes of biomass-based diesel above 1.28 bill gal and other advanced biofuels, as far as the overall impact of those fuels in terms of the factors we are required to consider under section 211(o)(2)(B)(ii). Any such differences would also be hard to quantify. At the same time, providing obligated parties the discretion to choose the method to comply with their advanced biofuel volume requirement most appropriate for their circumstances is likely to reflect the most effective or efficient way to achieve the advanced biofuel volume requirements given the market circumstances present in 2014. In addition, as noted above, providing obligated parties additional flexibility to address the 2014 supply circumstances is of increased importance under the circumstances surrounding supply and consumption as discussed in Section IV. Therefore we are not proposing to increase the volume of biomass-based diesel that will be required in 2014 and 2015.[35]

We invite comment on any different approaches that might be appropriate for balancing the factors noted above, including requiring an increase in the minimum volume of biomass-based diesel above 1.28 bill gal in both 2014 and 2015. As discussed above, volumes above 1.28 bill gal should be available, whether to meet a minimum biomass-based diesel requirement or the advanced biofuel requirement. Requiring a minimum volume of biomass-based diesel greater than 1.28 bill gal would place less emphasis on the benefits of preserving flexibility in how the required volume of advanced biofuel is achieved, and more emphasis on production of biomass-based diesel, without specific regard to the existence of a tax subsidy or to potential supplies of carryover biomass-based diesel RINs generated in 2013. We invite comment on all aspects of this issue, including information related to the statutory factors that we must consider as described in Section III.A. We also invite comment on the extent to which carryover biomass-based diesel RINs from 2013 would affect production levels of biomass-based diesel or other advanced biofuels in 2014, whether to meet the 1.28 bill gal biomass-based diesel volume or to achieve higher levels as a part of achieving the advanced biofuel requirement. We also seek comment on how EPA should take such information on biomass-based diesel carryover RINs into account when setting these volume requirements and the degree to which those carryover RINs support the goal of maintaining flexibility in how obligated parties meet the advanced biofuel mandate.

In the overall context of the RFS program, the level of the biomass-based diesel applicable volume can be seen as the minimum amount of biomass-based diesel that is required, recognizing that additional volumes of biomass-based diesel may be used, along with other advanced biofuels, to satisfy the volume requirements for advanced biofuel and total renewable fuel. Having considered the statutory factors, in the context of proposing the volume requirements for advanced biofuel and total renewable fuel, we believe the minimum required volume of biomass-based diesel should be set at the same level as 2013. This approach would also recognize that volumes of biomass-based diesel could be produced and consumed above the required volume level, and that obligated parties could well choose to use more biomass-based diesel than is required to satisfy their volume obligations for advanced and total renewable fuel. A volume requirement of 1.28 bill gal for biomass-based diesel in 2014 and 2015 would provide an assured minimum volume level for biomass-based diesel while also providing a clear opportunity for greater growth as part of the advanced biofuel category. Greater use of biomass-based diesel would be a recognized compliance path for the advanced and total renewable fuel volume obligations being proposed today. The proposed levels of those standards provide a

[34] 77 FR 59458 (September 27, 2012), especially Sections IV and V of the preamble.

[35] While the statute requires EPA to establish the applicable volume of cellulosic biofuel at projected production levels, this is not the case with respect to the applicable volume of biomass-based diesel. For biomass based-diesel, EPA may set the applicable volume at any level above 1 bill gal after consideration of the factors set forth in the statute and consultation with the Departments of Agriculture and Energy.

significant opportunity for greater volumes of biomass-based diesel to be produced and used if the market chooses them. We request comment on this proposed approach to the biomass-based diesel volume requirement for 2014 and 2015.

## IV. Proposed National Volume Requirements for Advanced Biofuel and Total Renewable Fuel for 2014

As described in Section I, the national volumes of renewable fuel to be used under the RFS program each year are specified in CAA 211(o)(2). For 2014, the applicable volume of advanced biofuel is 3.75 bill gal and the applicable volume of total renewable fuel is 18.15 bill gal. However, two statutory provisions authorize EPA to reduce these volumes. EPA may reduce these volumes if it reduces the applicable volume for cellulosic biofuel, or if the criteria are met under the general waiver authority.[36] We are proposing to exercise our discretion under these provisions to reduce the applicable volumes of advanced biofuel and total renewable fuel to address several factors that affect achievement of the volume goals that Congress established in the statute. These factors include limitations in production or importation of the necessary volumes, and factors that limit supplying those volumes to the vehicles that can consume them. Based on a detailed analysis of these limitations, we are proposing reductions in the statutory volumes of both advanced biofuel and total renewable fuel as shown below.

TABLE IV–1—PROPOSED VOLUMES FOR 2014

[billion gallons]

| | Statutory volume | Proposed volume | |
|---|---|---|---|
| | | Range | Mean |
| Advanced biofuel | 3.75 | 2.00–2.51 | 2.20 |
| Total renewable fuel | 18.15 | 15.00–15.52 | 15.21 |

We are proposing to use a combination of the cellulosic biofuel waiver authority and the general waiver authority to ensure that the proposed volumes are reasonably achievable given limitations in the volume of ethanol that can be practically consumed in motor vehicles considering constraints on the supply of higher ethanol blends to the vehicles that can use them and other limits on ethanol blend levels approved for use in motor vehicles and the volume of non-ethanol renewable fuels that we expect would be reasonably achievable. To accomplish this, we are proposing an approach involving the following three steps:

- First, we would determine the total volume of ethanol that can reasonably be supplied to and consumed in the transportation sector as both E10 and higher ethanol blends such as E85. We would then add to this the volume of all non-ethanol biofuels that we expect could be reasonably available for meeting all four of the applicable volume requirements (cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel). This first step would determine the volume of renewable fuel that can adequately be produced and supplied to consumers in light of limitations on the consumption of ethanol (commonly referred to as the ''ethanol blendwall'') and other relevant constraints, and would form the basis for the required volume of total renewable fuel as adjusted pursuant to EPA's waiver authorities.
- Second, we would determine the volumes of all sources of advanced biofuel that could be reasonably achieved to ensure that the required volume of advanced biofuel be set no higher than the volume that is projected to be reasonably available.
- Third, we would determine an appropriate volume of advanced biofuel at or below the projected available volume determined in the second step. This volume would include the required volume of cellulosic biofuels and biomass-based diesel, which are set separately, as well as any additional volumes of non-ethanol advanced biofuels projected to be reasonably achievable. This approach would account for the contribution of ethanol volumes in the advanced biofuel category to the supply concerns related to total renewable fuel, including considerations of both production and consumption. While ensuring that both advanced biofuel and non-advanced renewable fuels play a role in addressing the ethanol blendwall, it would also support Congress's goal in the RFS program of continued growth in the advanced biofuel category as reflected in the volume requirements established in the statute. As discussed in detail in Section IV.C.2, we have examined several alternative approaches to this third step, but we believe this approach best accommodates the objectives of the RFS program, while accounting for the limitations in the ability to produce and consume renewable fuels. We request comment, however, on alternative approaches and on all aspects of the framework discussed in this section.

We anticipate that the framework described in this section would apply not only to 2014, but to subsequent years as well. The specific estimates of volumes for each potential source of renewable fuel would be different in each future year, but the manner in which we aggregate those estimates to determine appropriate volume requirements would follow the overall approach described above. If circumstances differ substantially from those described here, or if further analysis suggests that our proposed approach is inadequate, we may consider the need for additional measures.

### *A. Statutory Authorities for Reducing Volumes To Address Biofuel Availability and the Ethanol Blendwall*

In establishing the annual volume objectives in the statute, Congress intended that volumes of renewable fuel, advanced biofuel, and cellulosic biofuel increase every year through 2022, and that volumes of biomass-based diesel be at least equal to the statutory volume for 2012, while granting EPA discretion to increase the biomass-based diesel volume based on consideration of several specified factors. However, Congress recognized that circumstances could arise that might require a reduction in the volume objectives specified in the statute as evidenced by the different waiver provisions in CAA 211(o)(7). As described in more detail below, we

[36] See CAA section 211(o)(7)(D) and (A).

believe that limitations in production or importation of qualifying renewable fuels, and factors that limit supplying those volumes to the vehicles that can consume them, both constitute circumstances that warrant a waiver under section 211(o)(7) as discussed below. With regard to the ethanol blendwall, a decrease in total gasoline consumption since EISA was enacted in 2007, coupled with limitations in the number and geographic distribution of retail stations that offer higher ethanol blends such as E85 and the number of FFVs that have access to E85, as well as other market factors, combine to place significant restrictions on the volume of ethanol that can be supplied to and consumed in the transportation sector. Based on the types of renewable fuel that we project are likely to be available in 2014 and the volume that is likely to be non-ethanol, we believe that the ethanol blendwall represents a circumstance that warrants a reduction in the mandated volumes for 2014.

The statute provides two separate authorities that permit EPA to reduce volumes of advanced biofuel or total renewable fuel under certain conditions: The cellulosic waiver authority and the general waiver authority. Applying a combination of these two authorities is the most appropriate way to address limitations in production or importation of the necessary volumes, and factors that limit supplying those volumes to the vehicles that can consume them, including the ethanol blendwall. This section discusses both of these statutory authorities and the manner in which we believe they can be used together to set standards for 2014.

1. Cellulosic Waiver Authority

Under CAA section 211(o)(7)(D)(i), if EPA determines that the projected volume of cellulosic biofuel production for the following year is less than the applicable volume provided in the statute, then EPA must reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year. Under such circumstances, EPA also has the discretion to reduce the applicable volumes of advanced biofuel and total renewable fuel by an amount not to exceed the reduction in cellulosic biofuel.

Section 211(o)(7)(D)(i) provides that ''[f]or any calendar year in which the Administrator makes such a reduction, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.'' Thus Congress authorized EPA to reduce the volume of total renewable fuel and advanced biofuel. As EPA has discussed before, this indicates a clear Congressional intention that under this provision EPA may reduce both the total renewable and advanced biofuel volume together, not one or the other.

As described in the May 26, 2009 NPRM for the RFS regulations, we do not believe it would be appropriate to lower the advanced biofuel standard but not the total renewable standard, as doing so would allow conventional biofuels to effectively be used to meet the standards that Congress specifically set for advanced biofuels.[37] EPA interprets this provision as authorizing EPA to reduce both total renewable fuel and advanced biofuel, by the same amounts, if EPA reduces the volume of cellulosic biofuel. Using this authority the reductions in total renewable fuel and advanced biofuel can be up to but no more than the amount of reduction in the cellulosic biofuel volume. Further discussion of this provision can be found in the final rule establishing the 2013 RFS standards.[38]

The statute does not provide any explicit criteria that must be met or factors that must be considered when making a determination as to whether and to what degree to reduce the advanced biofuel and total renewable fuel applicable volumes based on a reduction in cellulosic biofuel volumes under CAA section 211(o)(7)(D)(i). EPA can consider the criteria described in sections 211(o)(2)(B)(ii) and 211(o)(7)(A) in determining appropriate reductions in advanced biofuel and total renewable fuel under the cellulosic waiver authority at section 211(o)(7)(D)(ii), or any other factors that may be relevant. However, EPA must provide a reasoned explanation for any decision to reduce the advanced biofuel and total renewable fuel volume requirements under the cellulosic biofuel waiver authority.

2. General Waiver Authority

CAA 211(o)(7)(A) provides that EPA, in consultation with the Secretary of Agriculture (USDA) and the Secretary of Energy (DOE), may waive the applicable volume requirements of the Act in whole or in part based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator on her own motion. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment, that:

- Implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States; or
- There is an inadequate domestic supply.

In today's NPRM, we are proposing to use the general waiver authority to waive the applicable volume requirements based on the statute's authorization for the Administrator to act on her own motion. We have initiated discussions with both USDA and DOE on the proposed approach to determining the applicable volume requirements that is described in this section.

Because this provision provides EPA the discretion to waive the volume requirements of the Act ''in whole or in part,'' we interpret this section as granting authority to waive any or all of the four applicable volume requirements in appropriate circumstances. Thus, for example, unlike the cellulosic waiver authority, a reduction in total renewable fuel pursuant to the general waiver authority would not automatically result in the same reduction in advanced biofuel, and would not be limited by the reduction in cellulosic biofuel.

EPA has not previously interpreted or applied the waiver provision in CAA section 211(o)(7)(A)(ii) related to ''inadequate domestic supply.''[39] As explained in greater detail below, we believe that this ambiguous provision is reasonably and best interpreted to encompass the full range of constraints that could result in an inadequate supply of renewable fuel to the ultimate consumers, including fuel infrastructure and other constraints. This would include, for instance, factors affecting the ability to produce or import qualifying renewable fuels as well as factors affecting the ability to distribute, blend, dispense, and consume those renewable fuels.

The waiver provision at CAA 211(o)(7)(A)(ii) is ambiguous in several respects. First, it does not specify what the general term ''supply'' refers to. The common understanding of this term is an amount of a resource or product that is available for use by the person or place at issue.[40] Hence the evaluation of

[37] See 74 FR 24914–15

[38] 78 FR 49794, August 15, 2013.

[39] EPA has applied the waiver provision in section 211(o)(7)(A)(i) related to severe harm to the economy. See 77 FR 70752 (November 27, 2012), 73 FR 47168 (August 13, 2008).

[40] For example, see *http://oxforddictionaries.com/us/definition/american_english/supply* (a stock of a resource from which a person or place can be provided with the necessary amount of that resource: ''There were fears that the drought would limit the exhibition's water

Continued

the supply of renewable fuel, a product, is best understood in terms of the person or place using the product. In the RFS program, various parties interact across several industries to drive the ultimate use of renewable fuel by consumers of transportation fuel. For example, supplying renewable fuel to obligated parties and terminal blenders is one part of this process, while supplying renewable fuel to the ultimate consumer as part of transportation fuel is a different and later aspect of this process. This is clearly the case with respect to the renewable fuels ethanol and biodiesel, which are typically supplied to the obligated parties and terminals as a neat fuel, but in almost all cases are supplied to the consumer as a blend with conventional fuel (ethanol and gasoline or biodiesel and diesel). The waiver provision does not specify what product is at issue (for example, neat renewable fuel or blended renewable fuel with transportation fuel) or the person or place at issue (for example, obligated party or ultimate consumer), in determining whether there is an ''inadequate domestic supply.''

The waiver provision also does not specify what factors are relevant in determining the adequacy of the supply. Adequacy of the supply would logically be seen in terms of the parties who use the supply of renewable fuel. Adequacy of supply could affect various parties, including obligated parties, terminal operators, and consumers. Adequacy of supply with respect to the consumer might well involve consideration of factors different from those involved when considering adequacy of supply to the obligated parties. We believe that interpreting this waiver provision as authorizing EPA to consider the adequacy of supply of renewable fuel to all of the relevant parties, including the adequacy of supply to the ultimate consumer of transportation fuel, is consistent with the common understanding of the terms used in this waiver provision, especially in the context of a fuel program that is aimed at increasing the use of renewable fuel by consumers. In our view, this is the most reasonable and appropriate construction of this ambiguous language in light of the overall policy goals of the RFS program.

EPA has reviewed other fuel related provisions of the Clean Air Act with somewhat similar waiver provisions, and they highlight both the ambiguity of the RFS general waiver provision and the reasonableness of applying it broadly to include adequacy of supply to the ultimate consumer of transportation fuel. For example, CAA section 211(k)(6)(A)(ii) allows EPA to defer application of reformulated gasoline (RFG) requirements in a state that opts in to the RFG program if EPA determines that ''there is insufficient domestic capacity to produce reformulated gasoline.'' A related RFG waiver provision concerning the application of RFG requirements in the Ozone Transport Region, section 211(k)(6)(B)(i) and (iii), provides for a waiver of RFG requirements based on ''insufficient capacity to supply reformulated gasoline.'' For these RFG waiver provisions, Congress more clearly and explicitly indicated that the capacity to supply RFG could include consideration of factors beyond those concerning the capacity to produce RFG. In the language of the RFS general waiver provision, in comparison, Congress used a single, broader and clearly ambiguous phrase—''inadequate domestic supply''—without elaboration or clarification as to whether it refers solely to production capacity or also includes additional factors relevant to the ability to supply the fuel to various persons such as the ultimate consumer. As in the RFG provision, however, the adequacy of supply referred to in the RFS general waiver provision can logically—and we believe should—be read to include factors beyond capacity to produce that impact the ability of consumers to use the fuel as a transportation fuel.

CAA section 211(c)(4)(C)(ii) provides EPA with waiver authority to address ''extreme and unusual fuel or fuel additive supply circumstances . . . which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers.'' The supply circumstances must be the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure or another event that could not reasonably have been foreseen, and granting the waiver must be ''in the public interest.'' In this case, Congress clearly specified that the adequacy of the supply is judged in terms of the availability of the fuel for use by the ultimate consumer, and includes consideration of the ability to distribute the required fuel or fuel additive to the ultimate consumer. Although the RFS waiver provision does not contain any such explicit clarification from Congress, its broad and ambiguous wording provides EPA the discretion to reasonably interpret the scope of the RFS waiver provision. EPA's interpretation of the RFS waiver provision is consistent with the view, expressed more explicitly in the section 211(c) waiver, that the adequacy of the supply of a fuel or fuel additive can reasonably be judged in terms of availability for use by the consumer, and can include consideration of the capacity to distribute the product to the ultimate consumer.

CAA section 211(m)(3)(C) allows EPA to delay the effective date of oxygenated gasoline requirements for certain carbon monoxide nonattainment areas if EPA finds ''an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline . . . or fuel additives'' needed to make oxygenated gasoline. Here, Congress chose to expressly differentiate between ''domestic supply'' and ''distribution capacity,'' indicating that each of these elements was to be considered separately. This would indicate that the term inadequate supply, although ambiguous for the reasons discussed above, could in appropriate circumstances be read as more limited in scope. In contrast to the RFS waiver provision, the section 211(m) waiver provision includes additional text that makes clear that EPA's authority includes consideration of distribution capacity—reducing the ambiguity inherent in using just the general phrase ''inadequate domestic supply.'' Presumably this avoids a situation where ambiguity would result in an overly narrow administrative interpretation. The oxygenated gasoline waiver provision is also instructive in that it clarifies that it applies separately to both finished oxygenated fuel and to oxygenated fuel blending components. That is, there could be an adequate supply of the oxygenate, such as ethanol, but not an adequate supply of the blended fuel which is sold to the consumer. The RFS waiver provision employs the phrase ''inadequate domestic supply'' without further specification or clarification, thus providing EPA the discretion to determine whether the adequacy of the supply of renewable fuel can reasonably be judged in terms of availability for use by the ultimate consumer, including consideration of the capacity to distribute the product to the ultimate consumer. In contrast to the section 211(m) waiver provision, Congress arguably did not mandate that the RFS waiver provision be interpreted as providing authority to address problems affecting the supply of renewable fuel to the ultimate consumer. However, the RFS waiver provision does provide EPA the discretion to adopt such an

supply.''); *http://www.macmillandictionary.com/us/dictionary/american/supply* (''*A limited oil supply has made gas prices rise.*'' *and* ''*Aquarium fish need a constant supply of oxygen.*'').

interpretation, resulting in a policy approach consistent with that required by the less ambiguous section 211(m) waiver provision.[41]

As the above review of various waiver provisions in Title II of the Clean Air Act makes clear, Congress has used the terms ''supply'' and ''inadequate supply'' in different waiver provisions. In the RFS general waiver provision, Congress spoke in general terms and did not address the scope of activities or persons or places that are the focus in determining the adequacy of supply. In other cases, Congress provided, to varying degrees, more explicit direction. Overall, the various waiver provisions lend support to the view that it is appropriate, where Congress has used just the ambiguous phrase ''inadequate domestic supply'' in the general waiver provision, to consider supply in terms of distribution and use by the ultimate consumer, and that the term ''inadequate supply'' of a fuel need not be read as referring to just the capacity to produce renewable fuel or the capacity to supply it to the obligated parties.

We are aware that prior to final adoption of the Energy Independence and Security Act of 2007, Congress had before it bills that would have provided for an EPA waiver in situations where there was ''inadequate domestic supply or distribution capacity to meet the requirement.'' [42] EPA is not aware of any conference or committee reports, or other legislative history, explaining why Congress ultimately enacted the language in EISA in lieu of this alternative formulation. There is no discussion, for example, of whether Congress did or did not want EPA to consider distribution capacity, whether Congress believed the phrase ''inadequate domestic supply'' was sufficiently broad that a reference to distribution capacity would be unnecessary or superfluous, or whether Congress considered the alternative language as too limiting, since it might suggest that other types of constraints on delivering renewable fuel to the ultimate consumer should not be considered for purposes of granting a waiver.[43] Given the lack of interpretive value typically given to a failure to adopt a legislative provision, and the lack of explanation in this case, we find the legislative history to be uninformative with regard to Congressional intent on this issue. It does not change the fact that the text adopted by Congress, whether viewed by itself or in the context of other fuel waiver provisions, is clearly ambiguous.

We believe the term ''inadequate domestic supply'' should be interpreted to authorize EPA to consider the full range of constraints, including fuel infrastructure and other constraints, that could result in an inadequate supply of renewable fuels to consumers. Under this interpretation, we would not limit ourselves to consideration of the capacity to produce or import renewable fuels but would also consider practical and other constraints related to the fuel delivery infrastructure and their effect on the volume of qualifying renewable fuel that would be supplied to the ultimate consumer.

This interpretation is consistent with the provisions of section 211(o) and promotes Congress's purposes in establishing the RFS program, which are to ensure that certain volumes of renewable fuel are used by the ultimate consumer as a replacement for the use of fossil based transportation fuel.[44] The RFS program does not achieve the desired benefits unless renewable fuels are actually used to replace fossil based transportation fuels. For example, the greenhouse gas reductions and energy security benefits that Congress sought to promote through this program are realized only through the use by consumers of renewable fuels that reduce or replace fossil fuels present in transportation fuel. Imposing RFS volume requirements on obligated parties without consideration of the ability of the obligated parties and other parties to deliver the renewable fuel to the ultimate consumers, would achieve no such benefits and would fail to account for the complexities of the fuel system that delivers transportation fuel to consumers. We do not believe it would be appropriate to interpret the RFS general waiver provision more narrowly and limit EPA's consideration of factors related to the distribution and use of renewable fuels by the ultimate consumers of these fuels.

We invite comment on all aspects of our proposed interpretation of the waiver provision based on ''inadequate domestic supply.'' Whether or not circumstances projected for 2014 justify a waiver on this basis is discussed in Sections IV.B and IV.C.

3. Combining Authorities for Reductions in Advanced Biofuel and Total Renewable Fuel

The two primary drivers that we have considered in today's NPRM for reductions in the required volumes are limitations in the availability of qualifying renewable fuels and factors that constrain supplying those volumes to the vehicles that can consume them. These two drivers are both relevant forms of inadequate domestic supply, which authorize reductions under the general waiver authority and can also justify reductions under the cellulosic biofuel waiver authority. We believe that reducing both total renewable and advanced biofuel are appropriate responses to these circumstances, and we propose to use a combination of the two waiver authorities discussed above to achieve this result as neither authority independently is sufficient to justify the necessary volume reductions. As discussed in Section II, EPA is proposing to reduce the applicable volume of cellulosic biofuel based on a projection of production for 2014. Given this reduction in the cellulosic biofuel volumes, EPA is also proposing to reduce the applicable volume of advanced biofuel using the cellulosic biofuel waiver authority in Section 211(o)(7)(D)(i). We are proposing a larger reduction in total renewable fuel volume than in the advanced biofuel volume. In effect one part of the reduction in total renewable fuel would be based on both the general waiver authority and the cellulosic biofuel waiver authority, and the remainder of the reduction in total renewable fuel would be based solely on the general waiver authority. Below we discuss the basis for each of the proposed volume reductions.

[41] In CAA section 211(h)(5)(C)(ii), Congress authorized EPA to delay the effective date of certain changes to the federal requirements for Reid vapor pressure in summertime gasoline, if the changes would result in an ''insufficient supply of gasoline'' in the affected area. As with the RFS general waiver provision, Congress did not specify what considerations would warrant a determination of insufficient supply. EPA has not been called upon to apply this provision to date and has not interpreted it.

[42] H.R. 6 and S. 606 as reported by Senate Envt. & Public Works in Senate Report 109–74.

[43] There are, for example, legal constraints on the amount of certain renewable fuels that may be blended into transportation fuels.

[44] See CAA section 211(o)(1)(I) (renewable fuel defined as ''fuel . . . used to replace or reduce the quantity of fossil fuel present in a transportation fuel''), section 211(o)(2)(A)(i) (EPA's regulations must ''ensure that transportation fuel sold or introduced into commerce in the United States . . . contains at least the applicable volume of [renewable fuels]''). Also see CAA section 211(o)(1)(A), definition of ''additional renewable fuel.'' As one example, in the RFS program fuels with multiple end uses such as biogas or electricity are not considered a renewable fuel absent a demonstration that they will be used by the ultimate consumers as transportation fuel. As noted above, ethanol is almost always used as a renewable fuel in the form of E10 or higher, not as neat ethanol. The supply of neat ethanol, or biogas or electricity, does not by itself determine the supply of the fuel ethanol used as a transportation fuel.

*B. Determination of Reductions in Total Renewable Fuel*

As a first step in our proposed framework for setting the applicable volumes for total renewable fuel and advanced biofuel, we would estimate the volume of ethanol that can reasonably be expected to be available and consumed and the volume of non-ethanol renewable fuel that can reasonably be expected to be available and consumed. Taken together, these two considerations provide the basis for the volume of total renewable fuel that we are proposing to require. Our objective is that the proposed requirement would reflect a realistic projected estimate of renewable fuel supply, based to the greatest extent possible on data and real world circumstances.

For ethanol, the primary issue is the use of the fuel in the transportation sector, as the purpose of the RFS program is to ensure that renewable fuels are used to replace or reduce the use of fossil fuel based transportation fuel.[45] For ethanol blends, there are legal constraints on the amount of ethanol that can be blended into gasoline and practical constraints on the volume of ethanol that can be consumed as transportation fuel, notwithstanding the ability to produce higher volumes. For non-ethanol renewable fuels, the primary issue is the availability of volumes of the renewable fuel, and much less so the ability to consume it in the transportation sector if it is available. For purposes of this proposal, we generally refer to the consumption concerns related to ethanol, and the availability concerns related to non-ethanol forms of renewable fuel, recognizing the primary concern that is raised for each of these types of renewable fuel.

With regard to consumption concerns related to ethanol, it is important to note that the overall pool of gasoline into which ethanol must be blended to achieve EISA's statutory volume requirements is significantly smaller now than it was projected to be prior to enactment of EISA in 2007, which established both the revised RFS program requirements and the mandated significant increases in vehicle fuel economy standards. The total demand for gasoline has been decreasing over the intervening years due to the recent GHG and CAFE standards for vehicles, fuel prices, and broader factors affecting the economy. In the summer of 2006, when the reference case for EIA's Annual Energy Outlook 2007 (AEO2007) was developed, the projected 2014 gasoline energy demand was 18.68 Quad Btu and could have absorbed 15.43 bill gal of ethanol as E10. By comparison, in the summer of 2012 when the AEO2013 reference case was developed, the projected 2014 gasoline energy demand was 15.94 Quad Btu and could absorb 13.17 bill gal ethanol as E10. The difference between these two projections thus represents about 2.3 bill gal of ethanol. That is, the gasoline pool will be able to absorb about 2.3 bill gal less ethanol as E10 in 2014 than it would have been possible to absorb if the gasoline use projection in AEO2007 had been realized. If 15.43 bill gal of ethanol were to be consumed in 2014, the gasoline energy demand projected in AEO2013 would require about 3.4 bill gal of E85 if it is assumed that intermediate blends such as E15 do not penetrate the market to any significant extent.

TABLE IV.B–1—REDUCED GASOLINE DEMAND IN 2014

| | Motor gasoline (Quad Btu) [a] | E85 (Quad Btu) [a] | Total energy (Quad Btu) [a] | Equivalent E10 volume (bill gal) [c] |
|---|---|---|---|---|
| AEO2007 [b] | 18.67 | 0.004 | 18.68 | 154.30 |
| AEO2013 [b] | 15.84 | 0.097 | 15.94 | 131.67 |
| Difference | | | | 22.63 |

[a] Higher heating value.
[b] Table 2 of EIA's Annual Energy Outlook, total delivered energy consumption for all sectors.
[c] Assumes conversion factors of 3.561 mill Btu per barrel for ethanol and 5.253 mill Btu per barrel for gasoline.

We recognize that EIA's most current projections for motor fuel use are provided in the Short-term Energy Outlook (STEO), which is updated monthly, rather than in the AEO2013 reference case that was prepared in the summer of 2012. EPA understands that the estimate of 2014 transportation fuel use that EIA is required to provide to EPA for purposes of determining the applicable percentage standards will be based on the latest available STEO forecast rather than the Annual Energy Outlook. The forecast for 2014 gasoline use in the October 2013 STEO is about 1.5 percent higher that the AEO2013 reference case projection for 2014, while the implicit level of E85 use from the combined gasoline and ethanol forecasts in STEO is less than half of the AEO2013 E85 projection for 2014.

1. Estimating Ethanol Volumes That Could Reasonably Be Consumed

The total volume of ethanol that could reasonably be consumed is a function of three factors:

- The overall demand for gasoline.
- The consumption of ethanol as E10, E15, and E85.
- The presence of non-oxygenated gasoline (E0).

In this section, we provide our assessment of the likely distribution of ethanol in gasoline, with a particular emphasis on potential volumes of E85 that could reasonably be achievable. We discuss and request comment on the assumption that the overall pool of gasoline is comprised of E10 and E85 in 2014.

a. Projected Composition of 2014 Gasoline Supply

For the purposes of this proposed rule, we have assumed that all gasoline-powered vehicles and FFVs would use either E10 or E85. EPA has taken a series of regulatory steps to enable E15 to be sold in the U.S. In 2010 and 2011, EPA issued partial waivers to enable use of E15 in model year 2001 and newer vehicles, and in June of 2011, EPA finalized regulations to prevent misfueling of vehicles, engines, and equipment not covered by the partial waiver decisions. However, based on information currently available to the Agency, the volume of E15 being supplied in the market to date has been very limited. Therefore, to simplify the calculations and the discussion, we have assumed that the volume of E15

[45] Renewable fuels in heating oil and jet fuel are also valid under the RFS program, but ethanol is not used in these contexts. See CAA section 211(o)(1)(J) (the definition of renewable fuel), and CAA section 211(o)(2)(A) (the rulemaking authority related to ensuring renewable fuels are sold or introduced into commerce).

that is consumed in 2014 will be negligible, as there are currently very few retail stations offering E15. Any volumes of other intermediate blends, such as E30, are assumed to be sold through blender pumps into FFVs and are thus assumed to be part of the E85 volume consumed by FFVs.

We have not assumed that any gasoline would be E0 in 2014, since E10 is commonly used in nonroad engines just as it is used in cars and trucks. However, it is possible that a limited amount of E0 will be consumed if refiners are willing to provide it. If so, it would likely appear in premium gasoline, gasoline sold at marinas, or possibly unleaded motor gasoline used in light aircraft that do not require leaded aviation gasoline. There are also several states that require unblended gasoline to be provided to terminals, though the intention of these requirements is to ensure that terminals have the option to blend ethanol into that gasoline. We are not aware of any data that would provide a direct estimate of the demand for E0, and given that any ongoing demand for E0 is likely to be small, we have not included it in our calculations of the total volume of ethanol that can be consumed in 2014. Nevertheless, we request information and data that would permit us to determine the volume of E0 used in the gasoline pool and the appropriateness of incorporating some estimate of E0 into the final standards.

Aside from the volume of E85 that could reasonably be consumed in 2014, discussed in more detail in the next section, the gasoline pool would be comprised of E10. We have assumed that gasoline contains 10.0% denatured ethanol. This is consistent with survey data collected by the Alliance of Automobile Manufacturers indicating that the average ethanol content of all gasoline containing at least 5vol% ethanol is about 9.74%. This estimate is based on the use of ASTM test method D–5599, which measures only the alcohol portion of the gasoline, not any denaturant that would have been included with the ethanol before it was blended into gasoline. Since the denaturant portion of ethanol is at least 2%, ethanol that is blended into gasoline contains less than 98% ethanol. When blended into gasoline, therefore, the E98 would result in a gasoline-ethanol blend containing no more than 9.8% pure ethanol, or 10.0% denatured ethanol. Since all RFS ethanol volumes and RINs are also calculated on a denatured ethanol basis, it is thus appropriate to assume 10.0 percent. We request comment, however, on the accuracy of this assessment, including information with regard to whether and to what extent there are real world constraints that limit the denatured ethanol content of E10 to a level lower than 10.0 percent, and if so, what the implications are with regard to the volume of ethanol that can reasonably be consumed in 2014.

For E85 volumes, we recognize that the ethanol content could range from 51% to 83% according to ASTM D–5798–13. In today's NPRM we have assumed that the ethanol content of E85 is 74% consistent with the average value used by EIA in its Annual Energy Outlook. As for E10, we are treating the ethanol content of E85 as representing denatured ethanol.

b. Assessment of E85 Consumption

For purposes of determining the total renewable fuel volume requirement for 2014, consistent with the waiver authorities we are proposing to exercise in this action, we have assessed the volume of E85 that can reasonably be supplied to and consumed in the transportation sector, based on a variety of factors that limit supplying E85 in the transportation sector. Our assessment of the range of E85 volumes that can be reasonably consumed in 2014 considers factors such as infrastructure and consumer acceptance limitations as well as the impact that the applicable standards could have on the relative price of E85 and E10. In projecting the likely range of E85 consumption in 2014, we are not mandating that this amount of E85 be produced and consumed. The industries involved will decide what actually occurs in the marketplace. Obligated parties can take actions to facilitate the sale of E85, to the extent they can and choose to do so, or they can obtain RINs from non-ethanol sources of renewable fuel such as excess biodiesel, renewable diesel, heating oil, and biogas. We expect that the parties involved will resolve this through their business decisions. Nevertheless, we acknowledge that the renewable fuel volumes established in this rulemaking will have an impact on the volume of E85 consumed in 2014.

There are a variety of sources we have considered in developing our estimate of the volume of E85 that could reasonably be supplied in the transportation sector in 2014. To begin with, we investigated available sources of information on E85 production in 2012 and 2013. One report from EIA reported an E85 production volume of about 37 mill gal in 2012.[46] This volume is based on EIA survey data from forms EIA–810 (Monthly Refinery Report) and EIA–815 (Monthly Bulk Terminal and Blender Report). It likely underestimates actual E85 consumption as these surveys do not capture other sources of E85 production, such as the following:

- E85 produced using reformulated gasoline (RFG) or reformulated gasoline blendstock (RBOB) as the petroleum component of the fuel.
- E85 produced by refiners or blenders producing small quantities of E85.
- E85 produced by parties such as ethanol production facilities.

For the last category, we were able to estimate the potential volume of E85 produced in 2012 by ethanol facilities using data collected in the EPA-Moderated Transaction System (EMTS). Ethanol production facilities are in general prohibited from separating RINs from the ethanol that they produce. However, if an ethanol producer blends its ethanol into gasoline to make a transportation fuel, it can separate the RINs from the ethanol used in this blending. If they do produce transportation fuel, it is very likely to be E85 rather than E10. Therefore, we assumed that all RINs separated by ethanol producers represent ethanol blended as E85. Under this assumption, we determined that ethanol production facilities separated about 22 million RINs in 2012, which would correspond to about 30 mill gal of E85. When combined with the 37 mill gal estimate from EIA for E85 produced by refineries and blenders, the total 2012 E85 production is estimated to be about 70 mill gal.

At this time, available information regarding the volume of E85 production in 2013 is limited to the first half of the year. Using the same two sources of information described above—EIA survey data for E85 production by refineries and blenders, and EMTS data to estimate E85 production at ethanol facilities—we have estimated that total E85 production for the first half of 2013 was about 36 mill gal. However, both of these data sources demonstrate a strongly increasing trend over this timeframe. If this trend continues through the end of 2013, total E85 production could reach 100 mill gal in 2013. Furthermore, if this trend continued throughout 2014, total E85 production would reach 240 mill gal in 2014.[47] If this trend were further augmented to account for the rate of ongoing growth in both the number of

[46] EIA, ''U.S. Refinery and Blender Net Production'', April 29, 2013.

[47] Korotney, David, ''Extrapolation of E85 production in the first half of 2013 to the remainder of 2013 and through 2014,'' memorandum to EPA docket EPA–HQ–OAR–2013–0479

retail stations offering E85 and in the number of FFVs in the fleet that would occur over the remainder of 2013 and 2014, the projection for 2014 could be as high as 300 mill gal.[48] We anticipate that better and more detailed information will be available—including through this notice and comment process—by the time we promulgate the final rule. We solicit comment and information on 2013 consumption of E85 and its relevance to projecting reasonable levels of consumption in 2014.

It should be noted that historical consumption of E85 represents a small fraction of the consumption capacity of the FFVs currently in use. Even counting only those FFVs which have reasonable access to stations offering E85, their total consumption capacity is at least 1 bill gal. The low historical consumption was most likely due to a combination of factors including limited access to retail stations offering E85, the reduced range of vehicles operating on E85, and the fact that E85 has historically been more expensive than E10 on an energy-content adjusted basis. A survey conducted by the National Association of Convenience Stores found that 71% of customers indicated that price was the most important factor in determining where they buy gasoline.[49] We believe the volume of E85 that can and will be sold in the future is likely highly dependent on the price relationship between E10 and E85 and the availability of the fuel.

While historically E85 has been more expensive than E10 on an energy-content adjusted basis, recent data collected by EIA suggests that at least in some parts of the country this price relationship between E10 and E85 may be changing. In a Today in Energy article published on September 19, 2013, EIA presented data showing that in a collection of Midwestern states E85 retail prices were less than E10 retail prices on an energy-content adjusted basis in July 2013, the most recent month for which information was available.[50] This change in price relationship between E10 and E85 coincides with reported increases in sales volumes of E85 in Iowa and Minnesota, two states in which E85 sales volumes are publically available.[51] If the conditions that have led to this price relationship continue in the future E85 sales volumes are likely to continue to increase.

Moreover, as more gasoline stations sell E85 and more FFVs are sold in the United States the potential market for E85 will continue to increase. Through 2013 the number of stations selling E85 has been increasing at a rate of over 300 stations per year.[52] The size of the FFV fleet also increased by approximately 1 million vehicles in 2013.[53] If the recent pricing trends noted above persist and spread to other parts of the country the potential growth in E85 sales could be significant. Increasing E85 sales due to favorable pricing may also incentivize increasing growth rates in the number of stations selling E85 and the size of the FFV vehicle fleet. Such a scenario, however, is dependent on E85 being widely available at a price that is sufficiently lower than E10 to offset the lower energy content, increased refueling frequency requirements, and other factors. If the price relationship between E10 and E85 reverts to historic levels significant growth in E85 sales volumes is unlikely.

The price relationship between E85 and E10 depends on many factors, but three of the most significant are the prices of corn, crude oil, and RINs.[54] Corn and crude oil are the primary contributors to the cost of production of the ethanol and gasoline, respectively, used in the United States. The RIN price functions as a mechanism to subsidize the price of ethanol sold as E85 until it is at or below price parity with gasoline on an energy-equivalent basis even if the relative prices of corn and oil would not otherwise support such a pricing structure. The net effect of a reduction in the price of ethanol is that the price of E85 should fall relative to the price of E10, since E85 contains more ethanol than E10. The significant rise in the price of D6 (non-advanced) RINs and the subsequent drop in the retail price of E85 relative to E10 over the course of 2013 [55] occurred at a time when corn and thus ethanol was relatively expensive, indicating that RINs are already functioning in this manner. The recent shift in E85 prices relative to E10 and the simultaneous increase in E85 sales suggest the importance of paying careful attention to more recent data concerning E85 prices and sales volumes when projecting E85 volumes in 2014. While the more recent data is available from such a short period of time that it limits the confidence in using it to make projections for 2014, it nevertheless provides a basis for expecting that directionally, the lower the price of E85 compared to the price of E10, the greater the likelihood that FFV owners will opt to purchase E85. In addition to the volumetric energy content of E85 compared to E10, the price difference may also need to accommodate the inconvenience of a greater frequency of refuelings for a vehicle operating on E85, the potentially the greater driving distance to a station offering E85, the unfamiliarity that FFV owners may have with E85 or their own vehicle's capabilities, and differences in the mix of vehicle types among FFVs compared to conventional (not flex fuel) vehicles. These factors may also vary from region to region across the U.S. based on state and local policies, making it challenging to develop correlations representing the nation as a whole. While we currently have insufficient data to allow us to correlate sales volumes of E85 with its price relative to gasoline on an energy basis for the nation as a whole, information from Minnesota indicates a moderately strong correlation between E85/E10 price differential and E85 sales volumes. To further aid our projections for the final rule, we request comment on the manner and extent to which RIN prices are affecting gasoline and E85 prices for the nation as a whole, and any associated changes in E85 consumption.

EPA is not in a position to estimate E85 consumption based on data or modeling involving the price relationship between E10 and E85. Therefore, in addition to information on E85 consumption in 2012 and 2013 discussed above, we have considered other sources in developing our estimate of the volume of E85 that could reasonably be consumed. The following discussion presents the various sources and approaches used to inform our estimate.

To begin with, we considered that even without further reductions in the price of E85 relative to the price of E10,

[48] Based on 25% annual growth in E85 consumption as described in memo entitled, ''Application of one-in-four E85 access methodology to 2014'', Memorandum from David Korotney to EPA docket EPA–HQ–OAR–2013–0479.

[49] 2013 NACS Retail Fuels Report.

[50] ''E85 motor fuel is increasingly price-competitive with gasoline in parts of the Midwest.'' *Today in Energy*. EIA, 19 September 2013. <http://www.eia.gov/todayinenergy/detail.cfm?id=13031>. Study compared daily average observed E85 and regular gasoline prices at the same stations in the states of Iowa, Illinois, Indiana, Kentucky, Michigan, Minnesota, and Ohio.

[51] See Table IV.B.1–2.

[52] Memorandum from David Korotney to EPA docket EPA–HQ–OAR–2013–0479.

[53] EIA Annual Energy Outlook 2013, Table 40. Increase in Ethanol-Flex Fuel Cars and Light Trucks from 2013 to 2014.

[54] Other factors, including Federal and State taxes, subsidies and distribution costs, and relative convenience costs may also affect the price relationship. It is therefore very difficult to accurately predict fuel prices.

[55] ''E85 motor fuel is increasingly price-competitive with gasoline in parts of the Midwest.'' *Today in Energy*. EIA, 19 September 2013. <http://www.eia.gov/todayinenergy/detail.cfm?id=13031>. E85 prices have fallen steadily since the beginning of 2013 relative to E10 prices.

higher E85 consumption in 2014 could reasonably be expected compared to 2012 and 2013 based on business-as-usual growth in the number of FFVs in-use and the number of retail stations offering E85. The combined effect of these two factors could raise the total E85 consumption volume from our 2013 estimate of about 100 mill gal to about 125 mill gal in 2014 if the purchasing behavior of individual FFV owners remains constant.[56]

In the March 2010 RFS final rule we presented a means for estimating the E85 consumption capacity of FFVs based on historical market practices with diesel fuel.[57] We defined ''reasonable access'' to E85 as a situation in which one out of every four service stations to which an FFV owner had access offered E85, such that an FFV owner could be considered to have a reasonable option of refueling on E85. All other FFVs would then be assumed not to have reasonable access to E85, and would therefore always refuel on gasoline (here presumed to be E10). Following this one-in-four access approach, we estimated that approximately 8.6% of FFVs would have access to E85 in 2014 based on projections of the number of retail stations likely to offer E85. Similarly, the total amount of energy [58] consumed by all FFVs in 2014 would be about 9% of all the energy consumed by all light-duty vehicles and trucks. If the price of E85 reflected only the energy difference between it and E10, the total volume of E85 consumed under this approach could be about 160 mill gal. If the price of E85 was lower than this level and as a result half of all FFV owners with access used E85, the total volume of E85 consumed could reach 640 mill gal. Details of these calculations can be found in a memorandum in the docket.[59]

We have also considered other projections of E85 usage, recognizing the varying assumptions made in developing these projections as well as the differing purposes of the projections. For example, in their comments on the NPRM for the 2013 standards, the University of Illinois included an article from the February 13, 2013 issue of *Farmdoc Daily* in which E85 consumption in 2014 was assumed to be 300 mill gal if E85 prices were sufficiently low in comparison to E10 prices, though they did not quantify the prices needed to reach this E85 consumption level.

Finally, in the context of EPA's response to requests for a waiver of the 2012 renewable fuel volume requirements due to drought, the Department of Energy provided its own analysis of the maximum volume of E85 that could be consumed based on a technical analysis of retail station throughput.[60] Based on assumptions about E85 tank sizes at retail stations and the associated refill frequencies, DOE estimated that the maximum sales of E85 would be 600 mill gal.[61] This DOE analysis focused on the potential throughput at E85 stations given certain underground tank refueling frequencies, and did not consider such things as vehicle refueling frequencies. DOE's analysis also noted that to achieve its potential, E85 may need to be priced at a greater discount than it would be based on the energy content differential between E85 and gasoline alone to account for the more frequent refueling that E85 requires. We request comment on how DOE's analysis could be refined to better estimate potential E85 consumption.

c. Proposed Projection of E85 Consumption in 2014

Our goal for this proposal is to generate a realistic estimate of the amount of E85 that could reasonably be supplied to and consumed in the transportation sector in 2014 in light of the various circumstances involved with distribution and sale of E85. As with other volumes of renewable fuel, we believe that it is most appropriate to project a range of E85 volumes that reflects the volume that could reasonably be consumed in 2014. This projected range for E85 is used to determine a range for the total volume of ethanol that can be consumed, which is further combined with projected ranges for non-ethanol renewable fuels to determine a range for the total renewable fuel standard. For the final rule, we will determine a single value within the projected range that is our best estimate of a realistic projection of total renewable fuel in 2014 for purposes of exercising the waiver authority. Once the applicable volume requirements are set, the parties in the market will determine whether our estimated volume of E85 is in fact consumed, or whether other renewable fuels are consumed instead of the volume of ethanol that we estimate could be consumed as E85.

Based on our analysis of the available information described above, we are estimating a range of 100–300 mill gal of E85 consumption for 2014. We believe that this estimated range of E85 encompasses the most likely possibilities. Volumes below 100 mill gal are possible, but we believe that they are unlikely given that we expect such volumes to be reached in 2013 and the market conditions that resulted in these values to continue. Likewise volumes above 300 mill gal are possible, but we believe that they are unlikely. As described above, we believe that 300 mill gal of E85 could be consumed in 2014 if the monthly trends from the first half of 2013 continue unabated through both 2013 and 2014, and further increase due to growth in both retail stations offering E85 and FFVs in the fleet. E85 consumption above 300 mill gal in 2014 would require that these trends increase even further, and in a sustained fashion, through the end of 2014. Therefore 300 mill gal is the highest value we would consider at this time as an upper end of the range of possible volumes of E85 for 2014. However, we acknowledge that the volume of E85 sold into the market is likely also a function of the standard for total renewable fuel that we set. We request comment and data from the public that would help estimate the impact of lowering the volumetric requirements on the incentive to sell ethanol blends higher than E10.

In light of current uncertainties and the limited information available at this time, we are proposing that the specific volume of E85 that we would use in determining total ethanol consumption for 2014 would be based on the mean value from the Monte Carlo analysis within the range of potential E85 volumes. As explained in Section IV.B.4 below, the Monte Carlo analysis for E85 is based on a half-normal distribution, consistent with our view that a reasonable level of E85 consumption is more likely to be towards the lower end of the proposed range. Based on this analysis, the mean value for E85 consumption would be about 180 mill gal. The mean provides a balance between the projected higher and lower volumes of E85 that could be reasonably achievable. While we believe that

[56] This estimate is based on two years of growth in stations offering E85 and two years of growth in in-use FFVs. Growth factors are discussed further in a memo entitled, ''Application of one-in-four E85 access methodology to 2014'', Memorandum from David Korotney to EPA docket EPA–HQ–OAR–2013–0479.

[57] See discussion at 75 FR 14761, March 26, 2010.

[58] This estimate includes energy consumed from all fuel sources, including both E10 and E85.

[59] ''Application of one-in-four E85 access methodology to 2014,'' Memorandum from David Korotney to EPA docket EPA–HQ–OAR–2013–0479.

[60] ''Department of Energy Analyses in Support of the EPA Evaluation of Waivers of the Renewable Fuel Standard'', November 2012, EPA–HQ–OAR–2012–0632–2544.

[61] In generating this estimate, DOE assumed that the number of retail stations offering E85 would be about 2,300. We estimate that the number of stations offering E85 will be closer to 3,300 in 2014, which would correspond to a maximum E85 throughput of about 860 mill gal.

volumes of E85 at the high end of our proposed range are achievable and well within the capabilities of the existing vehicle and refueling infrastructure, basing the total renewable fuel volume on E85 volumes at the high end of what is achievable could present an increased risk of non-compliance for obligated parties if more E85 is called for than was projected in setting the percentage standards. This could occur, for example, if uncertainties in projected gasoline and diesel consumption for 2014 led to a requirement for more than 300 mill gal E85. By using the mean, we would reduce the likelihood of potential outcomes such as this.

The proposed mean volume of 180 mill gal for E85 is consistent with the recent upward trend in E85 production described above, where E85 is estimated to have been about 70 mill gal in 2012 and could reach and potentially exceed 100 mill gal in 2013. With regard to 2013, the increase is also consistent with available state-specific data on E85 production increases in the first two quarters.

TABLE IV.B.1.C–2—E85 PRODUCTION IN 2013

[Mill gal]

| | First quarter | Second quarter | % change |
|---|---|---|---|
| Minnesota | 1.9 | 3.0 | +58% |
| Iowa | 1.8 | 2.6 | +44% |

We request comment more generally on the range of E85 consumption that could reasonably be achieved under appropriate conditions in 2014, including the methodologies and approaches that would provide a projection of E85 that could reasonably be consumed in light of the various factors affecting the distribution and sale of E85. We reiterate our recognition that there is a short time period in which to achieve infrastructural and market changes that would affect E85 consumption in 2014 and that the approach to estimating E85 consumption described above, consistent with best available information, is appropriate. We request comment in particular on methodologies and approaches that would be appropriate in light of these considerations.

d. Estimating Total Ethanol Consumption in 2014

To estimate the total volume of ethanol that could reasonably be consumed in 2014, we assumed that volumes of E0 and E15 would be essentially zero, that E85 consumption would be in the range of 100–300 mill gal and contain 74% denatured ethanol, and that all remaining gasoline would be E10 with a denatured ethanol content of 10%. We assumed that the total energy consumption for all gasoline-powered vehicles and engines would be 14.33 Quadrillion Btu,[62] and that this amount of total energy consumption is fixed regardless of the relative amounts of E10 and E85. Based on a denatured ethanol energy content of 77,000 Btu/gal and a gasoline (E0) energy content of 115,000 Btu/gal, we determined that an E85 consumption range of 100–300 mill gal would correspond to a total ethanol consumption volume of 12.95–13.09 bill gal. This ethanol volume would include non-advanced ethanol such as that made from corn as well as advanced biofuels such as sugarcane ethanol or other domestically-produced advanced ethanol.

2. Estimating Availability of Non-Ethanol Renewable Fuel Volumes

In addition to the volume of ethanol that could reasonably be consumed in 2014, the total volume of renewable fuel depends on the volume of non-ethanol renewable fuels that are projected to be available in 2014. These include both advanced and non-advanced non-ethanol renewable fuels of all types that could reasonably be supplied to meet all four standards.

a. Non-Ethanol Cellulosic Biofuel

The production of non-ethanol cellulosic biofuel in 2014 is projected to be between 0 and 9 million ethanol-equivalent gallons. This volume could be significantly greater if additional pathways for the generation of cellulosic biofuel RINs are approved and additional volumes of heating oil generate cellulosic RINs. For more details on the potential production of non-ethanol cellulosic biofuels in 2014, and the companies expected to produce these fuels, see Section II.

b. Biomass-Based Diesel

Obligated parties are required to fulfill a Renewable Volume Obligation (RVO) based on a national applicable volume for biomass-based diesel of 1.28 bill gal of biodiesel (1.92 bill ethanol-equivalent gallons) in 2013.[63] As described in Section III, in today's NPRM we are proposing that the national applicable volume for biomass-based diesel remain the same for 2014. However, this proposed requirement is not based exclusively on projected availability and we recognize that greater volumes could be available for purposes of satisfying the advanced biofuel and total renewable fuel volume requirements.

There is a large amount of excess production capacity for biomass-based diesel, including at facilities that were in operation in 2012. While the total production capacity for all registered and unregistered biodiesel facilities is about 3.6 bill gal, the production capacity for only those facilities that produced some volume in 2012 is 2.4 bill gal, and the production capacity for facilities that utilized at least 20% of their individual production capacities in 2012 was about 1.6 bill gal.[64]

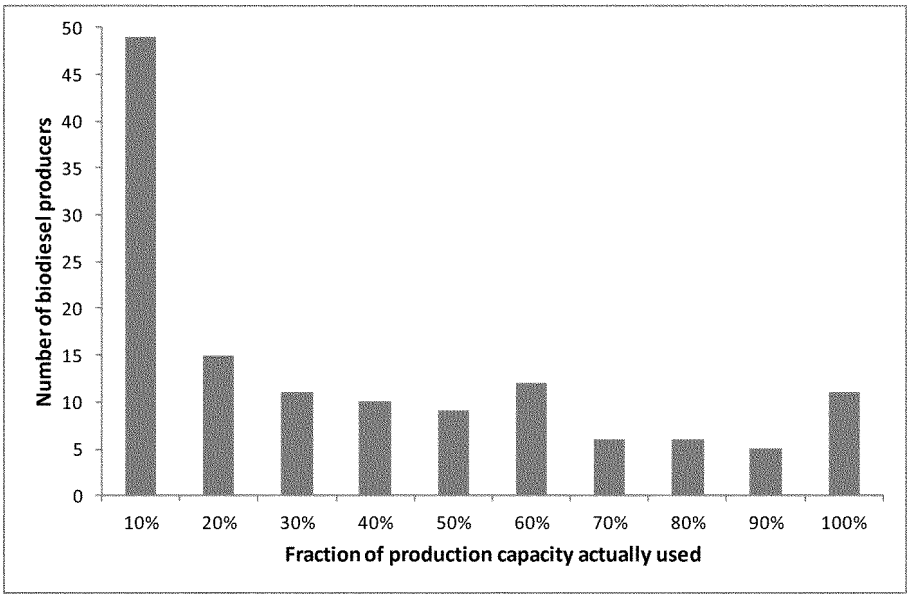
[62] EIA Annual Energy Outlook 2013, Table 37. Represents lower heating value. For determining the total volume of ethanol that can be consumed in 2014, AEO provides 2014 gasoline consumption projections in the required energy units. However, EIA's Short-Term Energy Outlook provides 2014 projections that are more recent, but in units of volume. EPA understands that the estimate of 2014 transportation fuel use that EIA is required to provide to EPA for purposes of determining the applicable percentage standards will be based on the latest available STEO forecast rather than the Annual Energy Outlook.

[63] 77 FR 59458, September 27, 2012 (establishing the national applicable volume for BBD).

[64] "Biodiesel plant list 2–6–13" in docket EPA–HQ–OAR–2013–0479.

Figure IV.B.2.b-1

Distribution of Capacity Utilization for Registered Parties that Produced Some Biodiesel in 2012



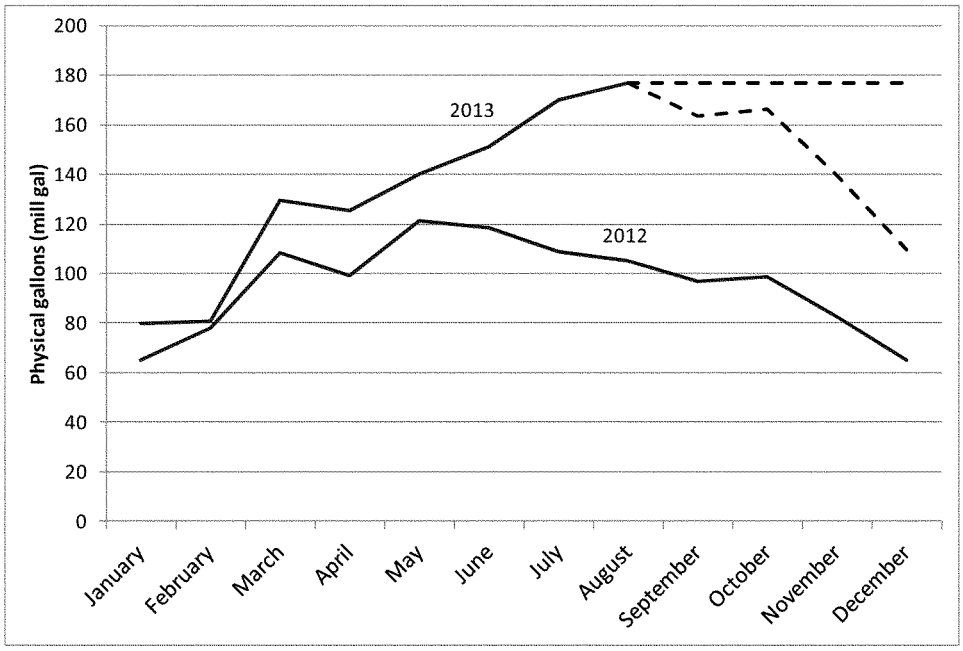

While there is a large amount of excess production capacity, the degree to which it will be used to produce biodiesel in excess of 1.28 bill gal depends on a variety of factors. One of those factors is the federal tax credit for biodiesel that was most recently extended through the end of 2013 under the American Taxpayer Relief Act of 2012. Under this Act, parties that produce a mixture of biodiesel and diesel fuel can claim a $1.00-per-gallon credit against their tax liability.[65] This tax credit has enabled biodiesel to be more competitive with other advanced biofuels. However, as of this writing it is unclear if this tax credit will apply in 2014. Since many expect the tax credit to have a direct impact on the economic attractiveness of biodiesel, the fact that it does not yet apply in 2014 adds uncertainty to the volume of biodiesel above 1.28 bill gal that may be produced and consumed in the U.S. As discussed further in Section IV.B.4–2 below, we have assumed that the tax subsidy for biodiesel will not be extended past 2013. This is reflected in an upper end of the range for biomass-based diesel no higher than the volume that may be used in 2013, and through the use of a half-normal distribution in the context of the Monte Carlo process. We request comment on the degree to which the presence of the biodiesel tax credit in 2014 would affect our projections of the volumes that could be reasonably available in 2014. To the extent we have new information on the status of the tax credit in 2014, EPA will consider that information in the development of the final rule.

According to production data available through EMTS, the total volume of biomass-based diesel produced through August 2013 was 1,053 million gallons. Depending on how monthly production continues through the remainder of 2013, we would expect total 2013 biodiesel production to be between 1.6 and 1.8 bill gal. A projection of 1.8 bill gal results from the assumption that the August production rate continues through the rest of 2013. If the trend in production follows the downward trend that occurred in 2012 in the September–December timeframe (representing, for example, potential seasonality of available feedstocks or demand), the total 2013 production would be 1.6 bill gal.

[65] See Section 405.

Figure IV.B.2.b-2

Projected Production of Biomass-Based Diesel in 2013




These 2013 biodiesel production volumes are occurring in the context of a $1/gal tax credit. While they provide a clear indication of the production capabilities of the industry, they do not provide an accurate indicator of the volumes that would be produced in the absence of the tax credit.

In the past some stakeholders have expressed concern that there may be limitations in biodiesel consumption that could be imposed by manufacturer warranties and cold-weather operation, and that this could impact use of biodiesel above 1.28 bill gal. However, we do not believe that this is the case for 2014. For instance, most diesel engines are warrantied by their manufacturer to B5. That is, the use of biodiesel in concentrations above 5vol% will void these warranties. While not a legal limitation on the use of biodiesel, it does present a practical limitation. Assuming a total diesel consumption volume of about 56 bill gal for 2014,[66] B5 for the diesel pool as a whole would correspond to a biodiesel volume of 2.8 bill gal. However, some diesel truck engines have been warrantied by their manufacturers to consume B20, starting in 2011.[67] This could potentially raise the limit on biodiesel consumption even higher, assuming retailers would dedicate a pump exclusively to B20 for this pool of diesel fuel consumers. Since 2.8 bill gal is significantly higher than the range of biodiesel volumes we are considering in this proposal, manufacturer warranties do not represent a limitation on biodiesel use in 2014.

Production of biodiesel in 2014 is likely to be impacted significantly by feedstock prices. Since their peak in August and September of 2012 during the height of uncertainty about the effects of the 2012 drought, prices of soybeans and soybean products have been trending downward. The USDA World Agricultural Supply and Demand Estimates (WASDE) Report's estimate[68] of soybean prices for the 2012/2013 marketing year have declined from an August 2012 range of $15–17 per bushel to a June 2013 estimate of $14.35 per bushel for the 2012/2013 marketing year. WASDE's June Outlook Report estimates that for the 2013/2014 marketing year (which includes the months of October through December 2013) soybean prices will range from $9.75–$11.75 per bushel which is in line with the projections used by EPA in the 2013 biomass-based diesel volume final rule.[69]

At the same time, even biodiesel blends as low as B5 cannot be utilized year-round due to cold weather constraints. The cloud point for B5 soy methyl ester (SME) blended with No. 2 diesel is estimated to be approximately 5 °F. Thus, the use of B5 is highly unlikely in any region where temperatures regularly drop below 5 °F. Assuming that biodiesel cannot be blended in such regions during any month where the 10% percentile temperature falls below 5 °F would result in a reduction of the 2014 biomass-based diesel volume by only about 3%. This would still permit more than 2 bill gal of biodiesel to be consumed in 2014. Thus, it appears that for 2014, the ability to consume biodiesel in the vehicle fleet is not constrained by cold weather.

There are a variety of other sources that provide benchmarks for what volumes of biodiesel could be

[66] EIA Annual Energy Outlook 2013, Table 11.

[67] Very few engine models are warrantied by manufacturers to consume B20 have been sold in the U.S. As such, this volume of biodiesel was assumed to be negligible for purposes of this estimate.

[68] *See http://www.usda.gov/oce/commodity/wasde/index.htm* (last accessed June 7, 2013); The WASDE report is a monthly report published by the U.S. Department of Agriculture (USDA) providing comprehensive forecast of supply and demand for major crops both for the U.S. and globally. Throughout the growing season and afterwards, estimates are compared with new information on production and utilization, and historical revisions are made as necessary. It is widely considered to be the benchmark to which all other private and public agricultural forecasts are compared.

[69] Compare *Cf* 77 FR 59458 at 59465 with the May 10, 2013 WASDE Report released on May 10, 2013, Table 518–15. *See http://www.usda.gov/oce/commodity/wasde/index.htm* (last accessed June 7, 2013).

reasonably available in 2014 in excess of 1.28 bill gal. For instance, in the 2013 standards final rule,[70] we assessed potential feedstocks for biodiesel production, concluding that excess soy oil and corn-oil could be used to produce an additional 200 mill gal of biodiesel in 2013 above the 1.28 bill gal requirement. For 2014 the additional biodiesel from these sources could be higher. According to USDA, domestic soybean production is expected to increase by 13% in the 2013 soybean marketing year which extends through September 2014, in comparison to the 2012 marketing year.[71] If this occurs, then domestic production of soy oil could increase by about 240 mill gal. Regarding corn-oil, more than one third of the 320 mill gal total production was exported in 2012. These exports could be diverted to biodiesel production depending on relative prices and other factors. Taken together, the use of both additional soy oil production and the diversion of corn oil exported could bring the total biodiesel production volume to about 1.62 bill gal.

We continue to receive requests for approval of additional RIN-generating pathways for new feedstocks to expand the availability of feedstock types and for new production processes to produce biodiesel.[72] While the degree to which these new processes and feedstocks may be viable for the 2014 production year is uncertain, given their directional impacts on lowering cost and improving feedstock availability, we would expect that approval of such new pathways would add biodiesel production volume in 2014. For example, since the adoption of the final rule in March 2010, we have added canola and camelina oil as valid biodiesel feedstocks and analyzed the potential to produce up to 600 million gallons of biodiesel from these new feedstocks by 2022 through expanded crop production.[73] These feedstocks were added in response to industry requests based on their intention to expand production of these feedstocks to support biodiesel production. Since canola and camelina are established crops that can be grown for biodiesel use today, some portion of these maximum volumes could be produced in 2014, adding to the volume of feedstock otherwise available for biodiesel production.

We are aware of three other sources that provide potential benchmarks for biodiesel production volume in 2014. In 2011, IHS Global Insight estimated the potential for biodiesel production over the following decade.[74] Under specified assumptions for crude oil price, crop yields, technology, and tax policies, this report concluded that it would be economically feasible to produce 1.54 bill gal biodiesel in the U.S. in calendar year 2014. This estimate assumed that the biodiesel tax credit would be extended beyond 2013, and did not examine a case in which the tax credit is not extended.

In their comments on the NPRM for the 2013 standards, the University of Illinois provided the results of an analysis of both production and consumption limitations for ethanol and biodiesel. They concluded that 1.7 bill gal of biodiesel could be available without overwhelming feedstock supplies, but provided little detail on the limits of feedstock supply. It also assumed the extension of the biodiesel tax credit. Darling International, Inc. also evaluated available feedstocks and concluded that 1.9 bill gal of biodiesel could be produced without diverting feedstocks from domestic food requirements. Their analysis, however, was silent with respect to whether it assumed the extension of the tax credit.

Finally, we note that there are also international sources of biodiesel that could be imported into the U.S. and which could be eligible to generate either D4 (biomass-based diesel) or D6 (renewable fuel) RINs in 2014. While there is a significant volume of biodiesel that is produced around the globe, it is unclear how much could potentially be imported into the U.S. in 2014 and accordingly we have not included these sources in our analysis of available supply.

Based on the discussion above, we have good reason to believe that the volume of biodiesel that can be produced in 2014 will be higher than the applicable volume requirement of 1.28 bill gal. A summary of all of the sources we have considered is provided below.

TABLE IV.B.2.b–1—PROJECTIONS OF 2014 BIOMASS-BASED DIESEL ORDERED FROM LOWEST TO HIGHEST

[Million gallons]

| | |
|---|---|
| Biomass-based diesel volume requirement | 1,280 |
| IHS Global Insight report | 1,540 |
| Extrapolated 2013 production | 1,570 |
| All registered biodiesel facilities that operated at least 20% of capacity in 2012 | 1,600 |
| Additional soy oil production and diversion of exported corn oil to biodiesel production | 1,620 |
| University of Illinois estimate in their comments | 1,700 |
| Darling International, Inc. estimate in their comments | 1,900 |
| Production capacity of all registered biodiesel facilities that produced some biodiesel in 2012 | 2,400 |

As with E85, we believe that it would be most appropriate to project a range of possible biodiesel production volumes for 2014, using the values in Table IV.B.2.b–1 as a guide. As explained above, the volumes in the table above represent potential technical availability. We recognize that multiple factors would ultimately influence actual production volumes. For the purposes of this NPRM, we are estimating a range of 1.28–1.6 bill gal of biodiesel production for 2014. While it would not be below 1.28 bill gal, as that is the required volume, it could be above the high end of 1.6 bill gal. However we estimate that it would be unlikely to be above this value, especially if the federal tax credit is not extended beyond 2013. For instance, the 1.9 bill gal estimate from Darling international, Inc. was based on extrapolating the historically high production rate from December 2011 into the future. The circumstances in December 2011 were unique: the tax credit for biodiesel was to expire at the

[70] 78 FR 49794, August 15, 2013.

[71] Pete Riley, ''Grains and Oilseeds Outlook; 2013 Agricultural Outlook Forum,'' USDA/Farm Service Agency, February 22, 2013. 13% is assumed to apply only during the first 9 months of 2014.

[72] For example, as of June 2013, EPA had 5 petitions for new biodiesel pathways under review and had approved 3 additional petitions for new biodiesel pathways.

[73] See for example the final rules adding giant reed and napier grass feedstocks (74 FR 41703) and final rule adding camelina and energy cane as feedstocks and renewable gasoline and renewable gasoline pathways (74 FR 14190).

[74] John R. Kruse, ''Biodiesel Production Prospects for the Next Decade'', March 11, 2011.

end of that month, prompting a jump in production. Thus while it is possible that the production rate from December 2011 might be sustained in the future, we believe it is unlikely if the biodiesel tax credit is not extended past 2013. Likewise the analysis provided by the University of Illinois which projected 1.7 bill gal biodiesel in 2014 assumed that the tax credit would be extended beyond 2013. A 2011 report prepared on behalf of the National Biodiesel Board indicated that the expiration of the tax credit at the end of 2010 caused a substantial reduction in biodiesel production in 2011 compared to 2010.[75]

For the purposes of this NPRM, we have assumed that the biodiesel tax credit will not be extended beyond 2013. As a result, we believe that biodiesel production volumes in 2014 are more likely to be towards the lower end of our proposed range of 1.28–1.6 bill gal. To reflect this assumption, we have used a half-normal distribution to represent biomass-based diesel in the context of the Monte Carlo process described in Section IV.B.4 below. This distribution has a mean value of 1,405 mill gal for biodiesel.

c. Non-Ethanol Advanced Biofuel

Non-ethanol advanced biofuel other than cellulosic biofuel and biomass-based diesel has a D code of 5, and could include biodiesel and renewable diesel that is co-processed with petroleum ,[76] heating oil, biogas, jet fuel, naphtha, and LPG. In 2012, RINs were generated for only three of these fuel types, as summarized in the following table.

TABLE IV.B.2.c–1—OTHER NON-ETHANOL ADVANCED BIOFUEL PRODUCED IN 2012

[Million ethanol-equivalent gallons]

| | |
|---|---|
| Heating oil | 0.2 |
| Biogas | 2.9 |
| Renewable diesel | 20.5 |
| Total | 23.6 |

These volumes were produced domestically and there were no volumes of non-ethanol advanced biofuel imported into the U.S. in 2012.

In order to estimate a range of possible volumes of other non-ethanol advanced biofuel for 2014, we examined the Production Outlook Reports that are required to be submitted by all registered renewable fuel producers under § 80.1449.

TABLE IV.B.2.c–2—PROJECTIONS FROM PRODUCTION OUTLOOK REPORTS FOR OTHER NON-ETHANOL ADVANCED BIOFUEL PRODUCTION IN 2014

[Million ethanol-equivalent gallons]

| | |
|---|---|
| Biogas | 45.8 |
| Naphtha | 6.6 |
| Renewable diesel | 79.1 |
| Total | 131.7 |

Because biogas cannot be used in conventional gasoline or diesel vehicles, we investigated more closely whether the 45.8 mill gal shown in the above table was realistic for 2014. According to EPA's Landfill Methane Outreach Program, about 360 mill ethanol-equivalent gallons of biogas is currently being purified and injected into existing natural gas pipelines.[77] Under § 80.1426 this biogas can generate advanced biofuel RINs if it is demonstrated to have been used to fuel CNG vehicles and meets all other regulatory requirements. However, this amount of biogas is on the same order of magnitude as the total volume of CNG used in all CNG vehicles each year, which is about 420 mill ethanol-equivalent gallons.[78] While establishing contracts to ensure that all CNG vehicles are fueled with landfill biogas rather than fossil-based natural gas is highly unlikely to occur in the short term given the rapid expansion underway of CNG vehicles in the marketplace, we believe it is reasonable that some smaller portion of all CNG vehicles could be fueled with landfill biogas in 2014. Since the 45.8 mill ethanol-equivalent gallons of biogas from the Production Outlook Reports, shown in Table IV.B.2.c–2, represents about 11% of the annual CNG vehicle consumption, it is reasonable to expect that this volume could be used in 2014 to fuel CNG vehicles and thus generate advanced biofuel RINs. We request comment, however, on whether this level of consumption can reasonably be achieved within the relevant time frame.

Therefore, based on the actual production in 2012 and the projected production for 2014, for this NPRM we have used a range of 24–132 mill gal to represent non-ethanol advanced biofuel with a D code of 5. While the actual volume could be above 132 mill gal, we believe this is unlikely as this volume is based on the projections made by the producers themselves in light of their assessment of their own capabilities and plans. Likewise, while the actual volume could be below 24 mill gal, we believe this is unlikely since the industry has demonstrated that it can produce at this level. For the final rule we will update this range based on more recent data on actual production in 2013 and more recent versions of the Production Outlook Reports.

d. Non-Ethanol Non-Advanced Renewable Fuel

To determine a range for the non-ethanol non-advanced renewable fuel volume, we used the same approach as for the non-ethanol advanced biofuel volume. That is, we used actual 2012 production to represent the low end of the range and 2014 projections from Production Outlook Reports to represent the high end of the range. This approach resulted in a range of 1–25 mill gal, mostly representing production of biodiesel at facilities that have been grandfathered under § 80.1403 and which may use feedstocks for which there is currently no valid RIN-generating pathway, such as sunflower or cottonseed oil. For the final rule we will update this range based on more recent data on actual production in 2013 and more recent versions of the Production Outlook Reports.

3. Treatment of Carryover RINs in 2014

In the final rule establishing the applicable standards for 2013, we estimated the volume of ethanol that would need to be consumed to meet the statutory volume requirements prior to consideration of RINs carried over from 2012 in 2013.[79] The total estimated volume of ethanol was 14.5 bill gal. If no ethanol blends higher than E10 were consumed in 2013, the total volume of E10 would be 131.1 bill gal (ignoring small amounts of E0) and the maximum volume of ethanol that could be consumed would thus be 13.1 bill gal. On the basis of these estimates, the volume of ethanol that is estimated to exceed the amount that could be consumed as E10 in 2013 was 1.4 bill gal.

In addition to the option of using E85 and/or more non-ethanol renewable fuels, the 2013 standards final rule also pointed to the substantial number of

[75] Urbanchuk, John, ''Economic Impact of Removing the Biodiesel Tax Credit for 2010 and Implementation of RFS2 Targets Through 2015,'' Prepared by Cardno Entrix for the National Biodiesel Board, June 8, 2011 (revised).

[76] Biodiesel and renewable diesel that is co-processed with petroleum does not meet the requirements for biomass based diesel (D4 RIN), however it may qualify as an advanced biofuel (D5 RIN).

[77] Based on list of operational landfill gas (LFG) energy projects provided at *http://www.epa.gov/lmop/projects-candidates/operational.html.*

[78] EIA's Short-Term Energy Outlook, Table 5a, released in September 2013. Projection of 0.093 bill cubic feet per day for 2014. Conversion factor is 0.96 thousand Btu per cubic foot.

[79] 78 FR 49794, August 15, 2013.

RINs carried over from 2012 into 2013 that could be used in lieu of physical volumes. We determined that there would be about 2.6 billion such carryover RINs available in 2013. If the 1.4 bill gal of ethanol that is in excess of that which can be consumed as E10 in 2013 is covered entirely by carryover RINs, then there would still be at least 1.2 billion RINs that could be carried over from 2013 and available for use in 2014.

As described in the 2007 rulemaking establishing the RFS program,[80] carryover RINs are intended to provide flexibility in the face of a variety of circumstances that could limit the availability of RINs. More specifically, carryover RINs provide a mechanism for offsetting the negative effects of fluctuations in either supply of or demand for renewable fuels. The flexibility afforded by these carryover RINs was evidenced in the recent response of the market to the drought in 2012. The flexibility of these carryover RINs is also what we highlighted in the 2013 standards final rulemaking as providing the opportunity for compliance despite potential constraints on physical ethanol consumption.

In the context of determining the appropriate volume requirements for 2014, as for 2013 it would be appropriate to consider carryover RINs that may be available. However, we believe it is also important to the viability of the market that some reasonable amount of carryover RINs continue to be available. Carryover RINs act as a buffer, and allow the regulated parties to address unforeseen circumstances that could limit the availability of RINs, and to address renewable fuel supply circumstances that differ from those assumed in the process of generating the projected volume ranges discussed above. The provision for carryover RINs recognizes that Congress structured the RFS program to provide a degree of flexibility for the obligated parties. In 2013 preserving such a buffer was not a concern, since even if the 1.4 bill gal of ethanol that is estimated to be in excess of that which can be consumed as E10 in 2013 is covered entirely by carryover RINs, there would remain at least 1.2 billion additional, unused carryover RINs. For 2014, however, if we accounted for all 1.2 billion carryover RINs in setting the applicable standards, obligated parties would be left with no flexibility for addressing other unforeseen circumstances. We believe that a standard-setting process that included an assumption that the carryover RIN balance would be reduced to zero would be contrary to the original intention of the provision for providing a degree of flexibility through carryover RINs. For this reason, we have not accounted for carryover RINs in our assessment of the reductions in the statutory volume requirements that would be appropriate in setting the RFS standards for 2014. For years after 2014, if circumstances differ substantially from those described here, we may again consider the existence of carryover RINs in the standard-setting process depending on the number of carryover RINs expected to be available and projections of supply and consumption of renewable fuels. We request comment on whether and how to account for carryover RINs in setting the standards.

4. Proposed Range for the Volume Requirement for Total Renewable Fuel

As discussed in the preceding sections, we have estimated volume ranges for five different categories of renewable fuel as a step towards estimating the volume requirement for total renewable fuel for 2014. These ranges are summarized below.

TABLE IV.B.4–1—VOLUME RANGES FOR ESTIMATING TOTAL RENEWABLE FUEL VOLUME FOR 2014

[Million ethanol-equivalent gallons]

| | |
|---|---|
| Ethanol that can be consumed | 12,954–13,087 |
| Available volumes of non-ethanol cellulosic biofuel | 0–9 |
| Available volumes of biomass-based diesel | [a] 1,920–2,400 |
| Available volumes of non-ethanol advanced biofuel | 24–132 |
| Available volumes of non-ethanol non-advanced renewable fuel | 1–25 |

[a] Represents a physical volume range of 1.28–1.6 bill gal.

By aggregating these five categories, we can estimate the total volume of renewable fuel that represents both the volume of ethanol that could reasonably be consumed as E10 and higher ethanol blends, and the volume of all non-ethanol renewable fuels that could reasonably be available to meet the four applicable standards. We note that in practice these five categories are not independent from one another, since different types of renewable fuel will differ in terms of their cost and higher volumes of one type of renewable fuel will reduce the need for volumes from another category in the context of meeting the applicable volume requirements. However, since the ranges shown above are intended to encompass reasonably achievable volumes for each type of renewable fuel, we believe that they can be treated as independent for the purposes of the aggregation described below.

In order to aggregate the ranges in Table IV.B.4–1 into a single range for total renewable fuel, we used a Monte Carlo analysis to account for the need to aggregate multiple ranges, each having different likely distributions of likelihood across their range. As discussed in the preceding sections, the high and the low end of each range represents values such that it is possible but unlikely that volumes would be outside of those ranges. We have therefore treated these individual ranges as representing the 90% confidence interval of a distribution of possible volumes. In other words, the low end of the range would represent the 5th percentile and the high end of the range would represent the 95th percentile. This approach is consistent with our judgment that, while the ranges shown in Table IV.B.4–1 are intended to encompass the vast majority of possible volumes, there remains a small possibility that volumes outside of those ranges are possible. We believe it is reasonable to treat these ranges as representing 90% confidence intervals for purposes of the Monte Carlo analysis, though we request comment on treating them as a different confidence interval such as 80% or 95%.

As an alternative to a Monte Carlo process for aggregating the volumes in Table IV.B.4–1, we could use a simple summation of the ranges (i.e. basing the low end of the range of total renewable fuel on the sum of the low ends of the ranges for each of the five different categories, and likewise for the high end

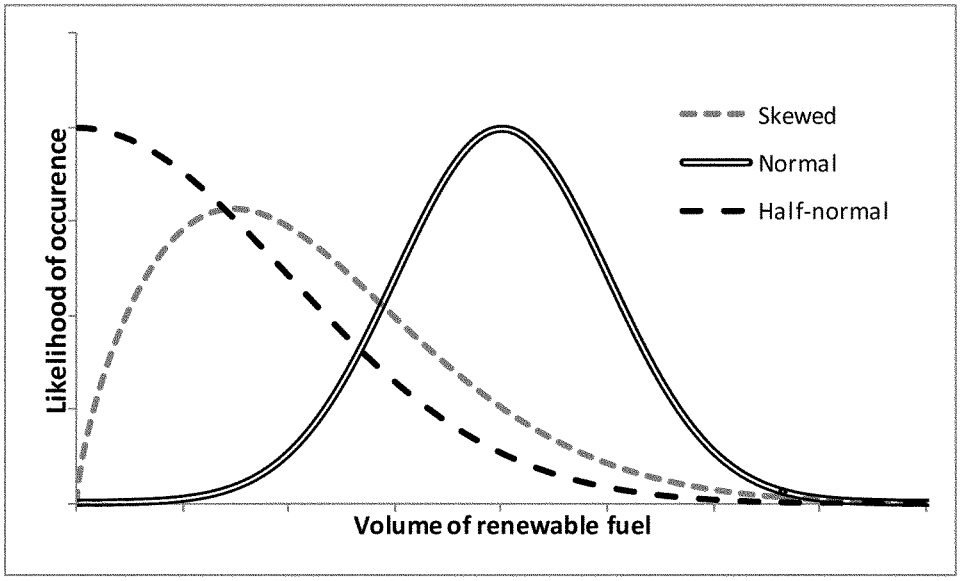
[80] 72 FR 23900, May 1, 2007.

of the range). However, we do not believe that such an approach would be appropriate. Doing so would tend to exaggerate the width of the range for the required volume of total renewable fuel as it is highly unlikely that 2014 volumes for each of these categories will simultaneously be at the extreme low or high end of the proposed ranges, and would also mischaracterize biofuel categories wherein one end of the range is expected to be more likely than the other. Nevertheless, we request comment on this or alternative methods to the Monte Carlo approach for aggregating the volumes shown in Table IV.B.4–1.

For the purposes of the Monte Carlo analysis, we are also proposing an appropriate shape to represent the applicable distribution of volumes within each range. The shape of the distribution of volumes is based on factors unique to each source of renewable fuel. We identified three standardized distributions that we can use to reasonably represent uncertainty in the distribution of volumes for each of the sources of renewable fuel under consideration.

Figure IV.B.4-1

Standardized Distributions Used to Aggregate Ranges[a]




[a] The skewed distribution is based on a Weibull distribution with a shape parameter of 0.5 and a scale parameter of 1.7.

These three standardized distributions provide a mechanism for representing the regions within each projected volume range where the greatest likelihood of reasonably achievable volumes may lie, based on considerations of the various sources of uncertainty unique to each source of renewable fuel. We recognize that the half-normal distribution would by definition include a mode of zero, and that this would imply that the greatest likelihood of occurrence is at the low end of the range. For sources of renewable fuel wherein the low end of the range is estimated to be zero, for instance for some cellulosic biofuel facilities as discussed in Section II.C, the use of the half-normal would appear to suggest that zero is the most likely result. However, in the context of the Monte Carlo process for combining volume ranges from different sources, we are proposing to use the mean rather than the mode as described more fully below. Nevertheless, other distributions might be reasonable to address concerns about the mode in the half-normal distribution. For instance, a gamma distribution could be used, or a Weibull distribution with greater skewness than that shown in the figure above. We request comment on the use of these alternative distributions.

In the case of biomass-based diesel, we are proposing that the applicable volume requirement for 2014 would be 1.28 bill gal. Since this volume would be required, there is no realistic likelihood that the actual volume will be below 1.28 bill gal. While production volumes of biomass-based diesel in 2013 are expected to substantially exceed the required volume of 1.28 bill gal, this is likely driven in large part by the tax credit for biodiesel, currently scheduled to expire at the end of the year, on the price of D6 RINs which have increased since the beginning of 2013, and potentially other factors as well. Without the tax credit in place, demand for biodiesel substantially beyond the required volume is uncertain. Under the assumption that the biodiesel tax credit will not be extended beyond 2013, we believe that any additional incremental volumes above 1.28 bill gal would be progressively less likely than the required volume. This suggests that a half-normal distribution would be the most appropriate way to represent volumes of biomass-based diesel. With regard to non-ethanol cellulosic biofuel, we developed a distribution that was based on an aggregation of projected volume ranges for each cellulosic biofuel facility. See Section II.C for more discussion. For the total volume of

ethanol that could reasonably be consumed, we chose a half-normal distribution representing ethanol in E10 and E85 because there is little historical information on how market prices for E85 might respond to higher RIN prices, nor on how FFV owners might respond to changes in the relative price of E85 and E10. In the future it may be more appropriate to use a skewed or normal distribution for the total volume of ethanol to reflect a growing understanding of the impact that RIN prices have on the retail price of E85 and the impact that E85 prices have on consumer choice. For volumes of non-ethanol advanced biofuel and non-ethanol non-advanced renewable fuel, we chose normal distributions because we believe there is an equal likelihood that the volumes that could be made available would be on either the low end of the respective ranges or the high end of the respective ranges. We do not believe that actual historical volumes, which form the basis for the low end of the range in both cases, should also be used as justification for using skewed distributions. The distributions that we used for each of the five categories of renewable fuel are shown below.

TABLE IV.B.4–2—STANDARD DISTRIBUTION ASSUMPTIONS USED IN ESTIMATING TOTAL RENEWABLE FUEL VOLUME FOR 2014

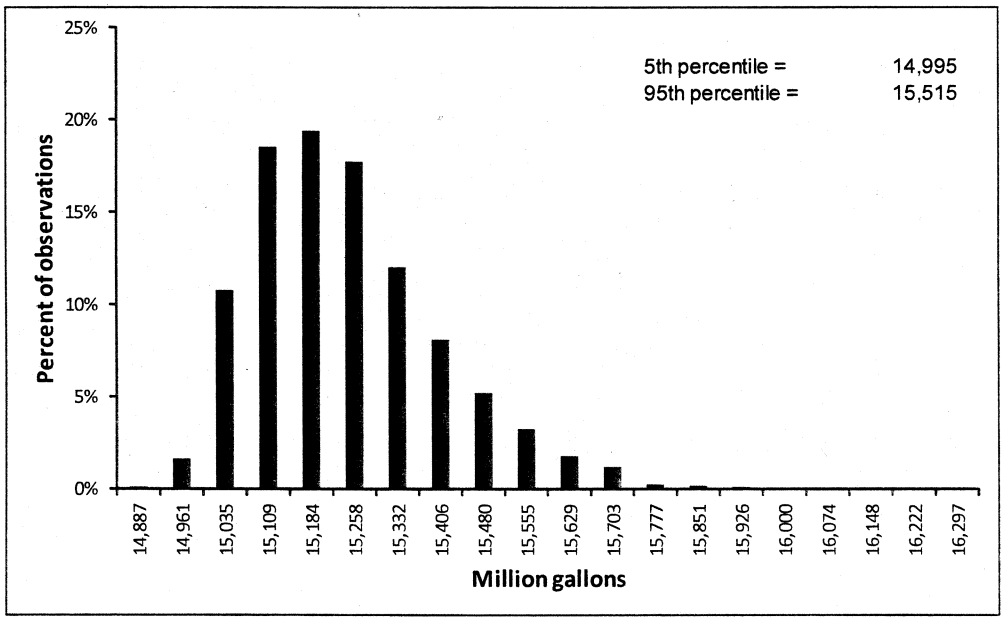
| | |
|---|---|
| Ethanol that could reasonably be consumed | Half-normal. |
| Available volumes of non-ethanol cellulosic biofuel | Combined.[a] |
| Available volumes of biomass-based diesel | Half-normal. |
| Available volumes of non-ethanol advanced biofuel | Normal. |
| Available volumes of non-ethanol non-advanced renewable fuel | Normal. |

[a] As described in Section II.C, this distribution is a combination of the distributions for all facilities projected to produce non-ethanol cellulosic biofuel using the same Monte Carlo process.

Based on the estimated ranges and distributions, we used a Monte Carlo process to aggregate the five distributions into a single distribution representing total renewable fuel. The Monte Carlo process randomly samples each of the five distributions in an iterative fashion. The results of all the iterations were then summed to produce a distribution for total renewable fuel. The figure below shows the resulting distribution after 3000 iterations. Details of the Monte Carlo process are provided in a memo to the docket.[81]

Figure IV.B.4-2

Results of Monte Carlo Simulation for Total Renewable Fuel




We recognize that the Monte Carlo process is an approximation to the mathematical formula that would result if the probability density functions for each of the distributions shown in Figure IV.B.4–1 were combined mathematically using convolution. However, we believe that the additional complexity of such a process is not warranted given the uncertainty inherent in the volumes ranges and the assigned distributions. The Monte Carlo process for combining distributions provides a reasonably accurate result with a considerably simpler process.

[81] David Korotney, ''Application of Monte Carlo process to the determination of proposed volume requirements for 2014 standards NPRM,'' memorandum to EPA Air Docket EPA–HQ–OAR–2013–0479.

Based on this approach to aggregating the five ranges shown in Table IV.B.4–1, the volume of total renewable fuel that we are proposing for 2014 would fall within the range of 15.00–15.52 bill gal.[82] Given that the applicable volume in the statute is 18.15 bill gal, this range represents a reduction of 2.63–3.15 bill gal. Within the uncertainties discussed above for each of the components, a range of 15.00–15.52 bill gal represents a volume of renewable fuel that reasonably accounts for both limitations in the volume of ethanol that can be supplied and consumed as well as limitations in the availability of non-ethanol renewable fuels.

The distribution generated by the Monte Carlo process also provides a basis for determining a specific value within the range. We do not believe that using either the low end or high end of the proposed range would be appropriate as the basis for the applicable standard. While we believe that the upper end of the projected range is achievable, basing the total renewable fuel volume on this higher value could present an increased risk to obligated parties if, for example, uncertainties in projected gasoline and diesel consumption for 2014 lead to a requirement for more renewable fuel than is available or can be consumed. A value between the low and high ends, in contrast, would better account for cases in which the actual values for some of the input volumes fall at the high end of their respective ranges while the actual value of other input volumes fall at the low end of their ranges. Options for a value falling between the low and high ends of the range include the mean, the mode (highest frequency value) and the median (50th percentile). It may also be reasonable to use a value representing higher or lower values in the distribution, such as the 25th or 75th percentile. The table below shows the values for each of these approaches that correspond to the distribution in Figure IV.B.4–2.

TABLE IV.B.4–3—POTENTIAL APPROACHES TO DETERMINING THE TOTAL RENEWABLE FUEL VOLUME REQUIREMENT

[Million ethanol-equivalent gallons]

| | |
|---|---|
| Mean | 15,207 |
| Mode | 15,059 |
| 25th percentile | 15,084 |
| 50th percentile | 15,183 |
| 75th percentile | 15,297 |

[82] The numbers are expressed as two significant digits to reflect that the applicable volumes in the statute are expressed this way.

In today's NPRM, we are proposing to use the mean value for the volume requirement for total renewable fuel, which represents our best estimate of the average amount of renewable fuel volumes that could reasonably be supplied. However, we request comment on whether it would be more appropriate to utilize either the mode or median (50th percentile), or some other value in the appropriate range shown in Table IV.B.4–3 that best reflects renewable fuel volumes that could reasonably be supplied under this program.

As discussed throughout this section, there is considerable uncertainty in the estimates of some of the various components from which the required volume for total renewable fuel has been derived. There are many factors affecting supply, and they could lead to greater or lesser supply of renewable fuels than projected, such as higher or lower volumes of non-ethanol renewable fuel or advanced biofuels, higher or lower volumes of E85, the degree to which E0 is used, if any, and so on. Obligated parties also have significant flexibility to address compliance through a number of various approaches, such as the ability to use carryover RINs generated in 2013, or to carry a compliance deficit into 2015. Our proposed approach for dealing with this uncertainty has been to develop ranges for the various components and utilize the Monte Carlo process for aggregating the components into a single range and mean value. These estimates will be refined for the final rule based on more up-to-date information and any new information received through the public comment process. We have used this approach to develop the best available volume projections using current information.

We understand that values lower or higher than the mean also could be used. For example, some parties may believe that a value lower than the mean should be used to provide greater confidence in the adequacy of supply, and avoid the risks associated with a volume reduction that is not sufficient to address the supply problems. From the perspective of production and use of renewable biofuels, in contrast, a higher value than the mean would avoid the risks associated with a volume reduction that is more than what is necessary to address the supply problems. As noted, our current view is that the best approach for resolving this uncertainty is to neither underestimate nor overestimate the market's capacity to supply and consume renewable fuels. We request comment on our proposed approach and alternate approaches described here.

*C. Determination of Reductions in Advanced Biofuel*

The second step in our proposed framework for setting the applicable volume standards would be to determine an appropriate reduction in advanced biofuel that accounts for the availability of advanced biofuels in light of the significant shortfall in cellulosic biofuel compared to the statutory volume, as well as the contribution of ethanol in this category to the supply concerns related to total renewable fuel. The proposed volume of advanced biofuel should also support the goals of the RFS program for continued growth in the advanced biofuel category as reflected in the increasing gap between the cellulosic biofuel and advanced biofuel volumes set by EISA.

*1. Available Volumes of Advanced Biofuel in 2014*

Using a process similar to that for total renewable fuel in Section IV.B above, we determined the maximum volume of advanced biofuel that can reasonably be available in 2014. This volume defines the upper limit for any potential volume requirement we would set for advanced biofuels under the overall approach we are proposing. As described more fully in Section IV.A above, availability is one important factor to consider it determining the appropriate volume of advanced biofuel to require. However, as discussed in Section IV.C.2 below, for 2014 additional considerations lead us to propose to set the advanced biofuel volume requirement at a level below the total available volume.

In this section we describe the estimation of reasonable ranges for four separate categories of advanced biofuel, including:

- Cellulosic biofuel.
- Biomass-based diesel.
- Domestic Production of Other Advanced Biofuel.
- Imported Sugarcane Ethanol.

a. Cellulosic Biofuel.

As discussed in Section II above, the production of cellulosic biofuel in 2014 is projected to be between 8 and 30 million ethanol-equivalent gallons. This range can be separated into ethanol and

non-ethanol components as shown below.

TABLE IV.C.1.a–1—PROJECTED VOLUMES OF CELLULOSIC BIOFUEL FOR 2014

[Million ethanol-equivalent gallons]

| | |
|---|---|
| Ethanol | 5–25 |
| Non-ethanol | 0–9 |
| Total | 8–30 |

The projected volume could be significantly greater if pathways for the generation of cellulosic biofuel RINs from landfill biogas and corn kernel fiber are approved and additional volumes of cellulosic heating oil are produced. For more details on the potential production of non-ethanol cellulosic biofuels in 2014, and the companies expected to produce these fuels, see Section II.

b. Biomass-Based Diesel

The range of biomass-based diesel that we used in estimating the availability of advanced biofuel is the same as the range that we used in determining the proposed volume of total renewable fuel. Table IV.B.2.b–1 lists the sources that we used to conclude that there could be 1.28–1.6 bill gal of biodiesel production in 2014.

c. Domestic Production of Other Advanced Biofuel

In Section IV.B.2.c above we used 2012 production data and Production Outlook Reports to develop a range of 24–132 mill gal representing non-ethanol advanced biofuel with a D code of 5. These same sources were used to develop a range of ethanol advanced biofuel with a D code of 5.

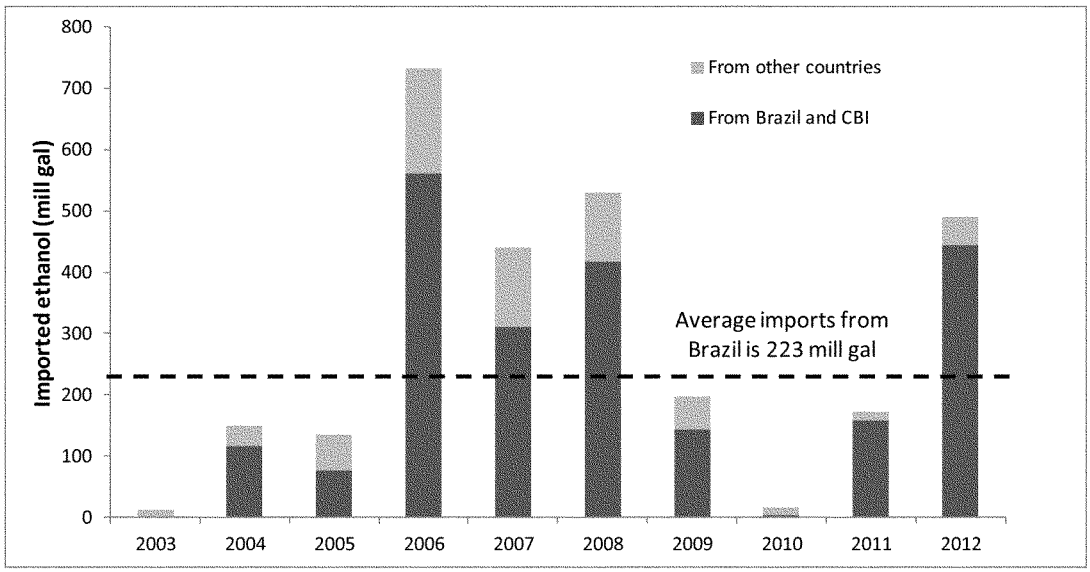
In 2012, 28 mill gal of ethanol advanced biofuel (other than cellulosic ethanol) was produced in the U.S. Based on Production Outlook Reports, we project that domestic production of such biofuel using some combination of sugarcane, grain sorghum, and separated food wastes could be as high as 142 mill gal. Based on these sources, for this NPRM we have used a range of 28–142 mill gal to represent domestic production of ethanol advanced biofuel with a D code of 5.

d. Imported Sugarcane Ethanol

Sugarcane ethanol qualifies as advanced biofuel, and historically the U.S. has imported substantial volumes of it. Imports from the last ten years are shown below. While ethanol imported into the U.S. is not produced exclusively from sugarcane, it has historically been the primary feedstock for ethanol imported into the U.S. and is expected to continue to be the primary feedstock of ethanol imported into the U.S. in future years. While the generation of advanced biofuel RINs from sugarcane ethanol is not limited to ethanol imported from Brazil, historically Brazil has been the source of the majority of ethanol imported into the United States. As such, this section focuses on the availability of sugarcane ethanol imported from Brazil.

Figure IV.C.1.d-1

Historical Imports of Ethanol into the U.S.




Source: EIA, "U.S. Imports by Country of Origin."

As some stakeholders have noted before, imported volumes of ethanol have been highly variable. As a commodity traded on the world market, the market clearing price and quantity of Brazilian ethanol sold into the U.S. market fluctuates over time. Significant factors that can affect the price and quantity of ethanol imported into the U.S. include:

- Sugarcane harvest (both acres planted and yield).
- Worldwide market for sugar.
- Worldwide demand for sugarcane ethanol.
- Brazilian demand for ethanol, including the minimum ethanol content of gasoline as specified by the Brazilian government.
- Potential for exporting corn-ethanol from the U.S. to Brazil.
- Opportunities for sale of sugarcane ethanol in the U.S. which is a function

of the RIN price for advanced biofuel, legal and practical constraints on the volume of ethanol that can be consumed, state Low Carbon Fuel Standards (LCFS) program demand, and the availability and price of competing advanced biofuels such as biodiesel.

• Import and export tariffs.

Production of sugarcane in Brazil in recent years has been lower than normally expected due to two factors. First, adverse weather conditions reduced production.[83] For example, adverse weather conditions are estimated to have reduced cane production by about 4% in the 2011/2012 marketing year.[84] Thus, a return to more typical weather conditions, such as occurred in the 2012/2013 agricultural marketing year, in the timeframe that this rulemaking considers would by itself restore approximately 4% of production. Second, the general global economic downturn in recent years made obtaining credit more difficult in the Brazilian sugar cane industry, resulting in delayed replanting of existing fields. Normally sugarcane fields are replanted every five or six years to maximize yield. However, the lack of available credit caused some growers to delay the expense of this replanting, resulting in older fields losing production.[85] It appears that credit conditions have eased and that more direct investment in sugar cane production and milling in Brazil is occurring.

Some parties expected a more typical trend in sugarcane ethanol production for the 2012/2013 through the 2014/2015 harvest years, with replanted fields boosting sugarcane production in existing plantations and, in response to increased worldwide demand, a growth in the acres planted with sugarcane. Increased production is supported by the Brazilian government which announced in February 2012 support for a plan to invest over $8 billion annually to boost cane and ethanol production.[86] Private investment in Brazil may also be increasing. For example, Usina de Acucar Santa Terezinha, a Brazilian ethanol producer, last year announced plans to invest almost $300 million in a new mill and sugarcane plantation.[87] Such information suggests that sugarcane and ethanol production in the 2013/14 and 2014/15 harvest years could be higher than production in 2011 and 2012.

Brazil's sugarcane ethanol production serves both its domestic market as well as the export market. The government of Brazil sets a minimum ethanol concentration for its gasoline. In 2011, the Brazilian government lowered this concentration to 20%, reflecting in part the decrease in domestic ethanol production. However, given the more optimistic production outlook, Brazil raised the minimum ethanol concentration to 25% effective May 1, 2013.[88] The 25% concentration rate is the highest allowed by law in Brazil. The ability of the Brazilian government to reset the minimum ethanol content introduces some uncertainty in projecting future Brazilian demand. However, historically, adjustments have been infrequent, relatively small in degree (a few percent), and largely influenced by the price of ethanol (high prices leading to a reduction in the minimum). Indeed, as evidenced by the reduction to a 20% blending rate in 2011, the Brazilian government considers the likely supply of sugarcane ethanol to support its domestic needs in setting the minimum ethanol content of its blended fuel.

The Iowa State/CARD model projects that Brazil will produce roughly 8.7 bill gal of ethanol in 2014. Non-fuel use and Brazilian ethanol exports to countries other than the U.S. is estimated to be around 500 million gallons, which leaves roughly 8.2 bill gal for Brazilian consumption and for exports to the U.S. If the minimum blending rate for ethanol in motor vehicles in Brazil is set at 25% (the current rate), Iowa State estimates that Brazil will consume roughly 5.9 bill gal of ethanol. At a 20% minimum blend rate, ethanol demand in Brazil would be roughly 5.2 bill gal. Therefore, even with the 25% minimum blending requirement for ethanol in vehicles, Brazil should have up to 2.8 bill gal available for a wide variety of domestic uses as well as the potential to export ethanol to the U.S.[89] Thus, assuming that the 25% blending rate remains in effect through 2014 (including both the 2013/14 sugarcane season which ends in May 2014 and the subsequent 2014/15 sugarcane season), the analyses referenced below suggest that more than enough ethanol should be available assuming normal weather patterns to support both the Brazilian domestic demand as well as export to the U.S. in 2014.

The historical volumes of sugarcane ethanol imports into the U.S. from Brazil are indicative of Brazilian production and export capacity, and thus provide several benchmarks for the volume that could potentially be imported into the U.S. in 2014. For instance, the average import volume over the last ten years is 223 mill gal, while the maximum volume was 560 mill gal in 2006. In 2010 Brazil had its largest ethanol production volume in recent history, and in that same year it exported 490 mill gal to the U.S. Finally, the largest total export volume from Brazil to all other countries was 1.35 bill gal in 2008.

There are several other sources providing estimates of what import volumes of Brazilian sugarcane ethanol may be possible in 2014. In an addendum to its Annual Energy Outlook 2013, EIA included an estimate of sugarcane ethanol imports of 719 mill gal for 2014.[90] In their comments on the 2013 standards NPRM, the Brazilian Ministry of Mines and Energy indicated that Brazil could achieve exports of 800 mill gal to the U.S. in 2014. A recent report from Iowa State University indicated that total ethanol imports could be 310–820 mill gal in 2014, depending on whether the biodiesel tax credit remains in effect.[91]

The Food and Agricultural Policy Research Institute (FAPRI) publishes several different documents that also provide some benchmarks. The 2012 World Agricultural Outlook projected that total net exports of ethanol from Brazil could be 1,259 mill gal in 2014,[92] while their Biofuel Baseline projects that total ethanol imports into the U.S. could reach 496 mill gal in 2014.[93]

[83] Gain Report BR110016, October 3, 2011, USDA Agricultural Service. See *http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Sugar%20Semi-annual_Sao%20Paulo%20ATO_Brazil_10-3-2011.pdf.*

[84] The sugar marketing year in Brazil's center-south sugar-producing region, where the large majority of production occurs, runs from May through April.

[85] On the margin, the high sugar prices may have also encouraged some growers to divert their crop from ethanol production to sugar production. But most cane growers do not have this flexibility with sugarcane mills designed for fixed amounts of refined sugar or ethanol so high sugar prices was likely a contributing factor but not a major cause of reduced sugarcane ethanol production in Brazil.

[86] See *http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/8987702.*

[87] See *http://www.bloomberg.com/news/2012-03-08/santa-terezinha-invests-283-million-in-brazil-ethanol-projects.html.*

[88] Platts, ''Brazil to raise ethanol mix in gasoline to 25% from 20% May 1,'' *http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/8194390.*

[89] Personal Communication with Dr. Bruce Babcock, Iowa State, June 27, 2013.

[90] ''AEO2013—Addendum on Ethanol Trade Balance.pdf'' document submitted to docket EPA–HQ–OAR–2013–0479.

[91] Bruce A. Babcock et al, ''Biofuel Taxes, Subsidies, and Mandates: Impacts on US and Brazilian Markets,'' Staff Report 13–SR 108, May 22, 2013.

[92] FAPRI–ISU 2012 World Agricultural Outlook, ''Ethanol Trade''.

[93] FAPRI–MU Biofuel Baseline, March 2013. FAPRI–MU Report #02–13. Values for the 2013/2014 agricultural year were averaged with those from the 2014/2015 agricultural year assuming that the year begins in September and ends in August.

Based on the discussion above, we have compiled a list of benchmarks that we believe can be used to estimate a range of import volumes for Brazilian sugarcane ethanol.

TABLE IV.C.1.d–1—PROJECTIONS OF 2014 IMPORTED SUGARCANE ETHANOL ORDERED FROM LOWEST TO HIGHEST

[Million gallons]

| | |
|---|---|
| Average import volumes from 2003–2012 | 223 |
| ISU Staff Report—biodiesel tax credit in place | 310 |
| Ethanol exported from Brazil to the U.S. when ethanol production was at its historical maximum (2010) | 490 |
| FAPRI Biofuel Baseline | 496 |
| Production Outlook Reports | 510 |
| Historical maximum ethanol imported into the U.S. from Brazil (2006) | 560 |
| AEO2013 | 719 |
| Projection from Brazilian Ministry of Mines and Energy | 800 |
| ISU Staff Report—biodiesel tax credit not in place | 820 |
| FAPRI 2012 World Agricultural Outlook—total Brazilian exports in 2014 | 1,259 |
| Historical maximum ethanol exported from Brazil (2008) | 1,350 |

For the purposes of this NPRM, we estimate, based on a review of the benchmarks shown in the table above, that a range of 300–800 mill gal of Brazilian sugarcane ethanol could be available for import to the U.S. in 2014. We do not believe that it would be appropriate to use either the highest or lowest values in the table since they are unlikely to reasonably represent the market circumstances in 2014.

While the volumes of sugarcane ethanol imported into the U.S. in 2012 were about 500 mill gal, and in 2013 could reach a similar level, we believe it is reasonable to use 300 mill gal as the low end of the range for 2014. There has been significant variability in sugarcane ethanol imports in the past, so volumes below 500 mill gal are possible depending on market factors and relevant public policies in both countries. While volumes above 800 mill gal are possible, we believe that they are unlikely given that the Brazilian agency responsible for projections of exports indicated that 800 mill gal would be achievable in 2014, and 800 mill gal would be a substantially higher import volume of Brazilian sugarcane ethanol than in any previous year.

We have used a projected range of 300–800 mill gal for imported sugarcane ethanol in our estimate of the total volume of advanced biofuel that could be available in 2014. However, as described in Section IV.C.2 below, we are not proposing to use only availability in the determination of the applicable volume requirement for advanced biofuel. Thus the proposed volume requirement for advanced biofuel would not require the use of 300–800 mill gal of sugarcane ethanol, and the actual volume of sugarcane ethanol that is imported will be highly dependent upon competition in the U.S. market with other advanced biofuels that could be available.

e. Summary

As discussed in the preceding sections, we have estimated volume ranges for six different categories of advanced biofuel as a step towards estimating the availability of advanced biofuel for 2014. We also identified which of the three standardized curves shown in Figure IV.B.4–1 would be most appropriate for each category. A discussion of the standardized distributions for cellulosic biofuel, biomass-based diesel, and domestic non-ethanol advanced biofuel are provided in Section IV.B.4 above. For volumes of ethanol advanced biofuel, we chose a normal distribution because we believe there is an equal likelihood that the volumes that could be made available would be on either the low end of the range or the high end of the range. A normal distribution for ethanol advanced biofuel is also consistent with our approach to non-ethanol advanced biofuel, as both ranges were developed from the same sources. For volumes of imported sugarcane ethanol, the most recent historical data on actual imports suggests that the middle of the range 300–800 mill gal is likely, and this suggests that a normal distribution is more reasonable than a skewed distribution. The advanced biofuel ranges and the assumed standardized distributions are summarized below.

TABLE IV.C.1.e–1—VOLUME RANGES FOR ESTIMATING ADVANCED BIOFUEL AVAILABILITY FOR 2014

[Million ethanol-equivalent gallons]

| | | |
|---|---|---|
| Available volumes of non-ethanol cellulosic biofuel | 0–9 | Skewed. |
| Available volumes of ethanol cellulosic biofuel | 5–25 | Combination.[a] |
| Available volumes of biomass-based diesel | [b] 1,920–2,400 | Half-normal. |
| Available volumes of domestic non-ethanol advanced biofuel | 24–132 | Normal. |
| Available volumes of domestic ethanol advanced biofuel | 28–142 | Normal. |
| Available volumes of imported sugarcane ethanol | 300–800 | Normal. |

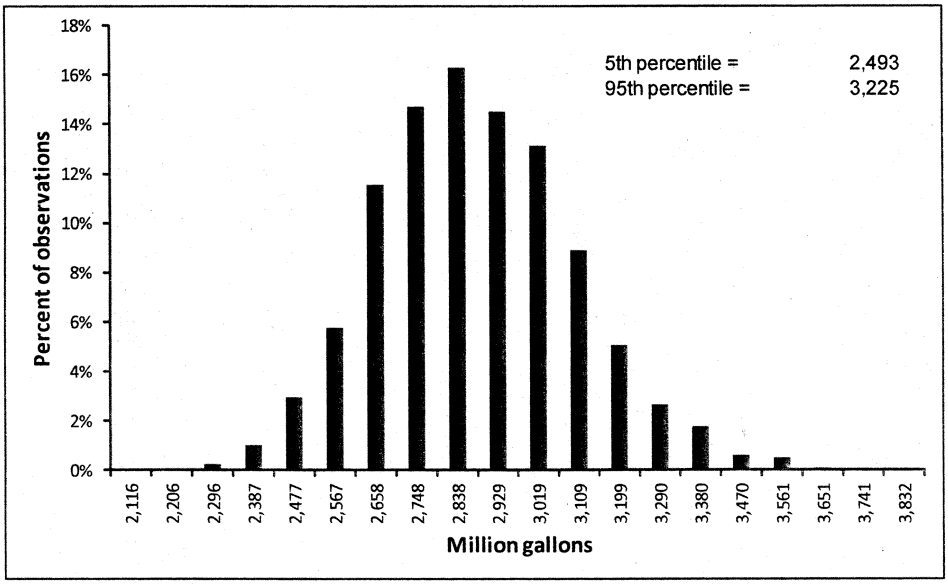
[a] As described in Section II.C, this distribution is a combination of the distributions for all facilities projected to produce non-ethanol cellulosic biofuel.

[b] Represents a physical volume range of 1.28–1.6 bill gal.

As for the total renewable fuel volume, the high and the low end of each range represents values such that it is possible but unlikely that volumes would be higher or lower than this range. EPA therefore treated each individual range in Table IV.C.1.e–1 as representing the 90% confidence interval of the applicable standardized distribution. We then used a Monte Carlo process in which each of the six distributions were randomly sampled in an iterative fashion. The results of all the iterations were then summed to produce a distribution for advanced. The figure below shows the resulting distribution after 3000 iterations.

Figure IV.C.1.e-1

Results of Monte Carlo Simulation for Advanced Biofuel Availability




Based on this approach to aggregating the six ranges shown in Table IV.C.1.e–1, we believe that available volumes of advanced biofuel are likely to fall within the range of 2.49–3.23 bill gal. Given that the volume requirement in the statute is 3.75 bill gal, this range of availability represents a reduction of 0.52–1.26 bill gal.

2. Options for Determining Appropriate Reductions in Advanced Biofuel

While projected availability defines the upper limit of the volume requirement we would set for advanced biofuel, we have also considered two other factors: the contribution of ethanol in the advanced category to the supply concerns discussed above with respect to total renewable fuel, and the RFS program's goal of growth in the advanced biofuel category. Below we discuss three approaches that could be taken to determine an appropriate volume of advanced biofuel for 2014. We believe that Option 3 best addresses the dual concerns of constraints on ethanol supply and consumption and limited availability of advanced biofuels while also effectuating Congress's intention that the volume requirement for advanced biofuel continues to grow.

a. Option 1: Advanced Biofuel Availability

The RFS volume requirements that Congress established in CAA 211(o)(2)(B) increase steadily between 2009 and 2022. Over this period, the amount of total renewable fuel which is not advanced biofuel (largely corn starch based ethanol) was intended by Congress to grow slowly up to 15.0 bill gal in 2015, and then stay at that level for subsequent years. Cellulosic biofuel was intended to grow very dramatically, from 0.5 bill gal in 2012 to 16.0 bill gal in 2022. Non-cellulosic advanced biofuel was expected to grow steadily every year, increasing from 1.5 bill gal in 2012 to 5.0 bill gal in 2022. This anticipated growth of the advanced biofuel category is also evident from its increasing role as a component of the applicable volume of total renewable fuel, growing from 5.4% in 2009, to 20.7% in 2014, and 61.1% in 2022. Advanced biofuel must meet a GHG reduction threshold of 50%, compared to a 20% threshold for non-advanced renewable fuel.[94] Thus, increased substitution of advanced biofuels for fossil fuels would result in lower lifecycle GHG emissions from transportation fuels.

In previous rulemakings where we considered reductions in the applicable annual volume of advanced biofuel following a reduction in the statutory volume for cellulosic biofuel, we focused on the availability of advanced biofuel (and in some cases available carryover RINs) when making determinations as to whether a reduction in advanced biofuel volumes was warranted. Using availability to set the applicable volume of advanced biofuel for 2014 and beyond would be consistent with past practice, and would reflect placing sole emphasis on its availability and the growth in advanced biofuels that results. However, the approach we used in previous annual rulemakings was based on the circumstances in previous years. In particular, supply concerns related to the legal constraints on the amount of ethanol that can be blended into gasoline and practical constraints on the volume of ethanol that can be consumed were not a limiting factor in previous years and so were not discussed as a potential basis for determining volumes. As discussed in Section IV.B.1 above, constraints on ethanol consumption are a limiting factor in 2014.

Moreover, using availability as the sole basis for determining advanced biofuel volumes would ignore the impact that ethanol within the advanced biofuel category have on the supply concerns related to constraints on ethanol consumption in blends higher than E10. While the available volume of advanced biofuel would be predominantly non-ethanol, a substantial volume would be ethanol.[95] For an advanced biofuel availability of 2.49–3.23 bill gal (see Figure IV.C.1.e–

[94] Renewable fuels grandfathered under the provisions of § 80.1403 are not required to meet any GHG threshold.

[95] While production volumes of ethanol that can qualify as an advanced biofuel, both domestically and internationally are significant, consumption of this fuel will be constrained

1), the fraction that is ethanol ranges from an average of about 18% at the low end of the range to an average of about 25% at the high end of the range. Since any advanced biofuel that is ethanol contributes to the concerns related to total ethanol consumption, it is appropriate to consider reductions in the required volume of advanced biofuel beyond the 0.52–1.26 bill gal reduction needed to ensure that the volume required is available.

For these reasons, we invite comment on the Option 1 approach but are not proposing it.

b. Option 2: Full Reduction in Cellulosic Biofuel

Under the cellulosic waiver authority we have the discretion to reduce advanced biofuel by up to the same amount that we reduce cellulosic biofuel. Thus, a second option would be to reduce the advanced biofuel volume by the same amount that we reduce the cellulosic biofuel volume. Our proposed cellulosic biofuel volume requirement of 8–30 mill gal for 2014 corresponds to a reduction of 1,720–1,742 mill gal in comparison to the statutory volume of 1,750 mill gal. This is approximately twice the size of the reduction in advanced biofuel that would result from accounting for availability alone, as in Option 1, and would result in an advanced biofuel volume requirement of 2,008–2,030 mill gal.

A reduction of 1,720–1,742 mill gal in the advanced biofuel requirement would allow for overall growth in non-cellulosic advanced biofuel, consistent with overall levels of non-cellulosic advanced biofuels that Congress specified for 2014 in 211(o)(2)(B). The table below shows that this approach would ensure that the required volume of non-cellulosic advanced biofuel—comprised of biomass-based diesel and other advanced biofuel—that would be needed to meet the requirements would remain at 2.0 bill gal, the same volume that would have been needed to meet the statutory level of 3.75 bill gal of advanced biofuel if 1.75 bill gal of cellulosic biofuel were available.[96]

TABLE IV.C.2.b—IMPACT ON OTHER ADVANCED BIOFUEL OF REDUCING THE ADVANCED BIOFUEL REQUIREMENT BY AN AMOUNT EQUAL TO THE REDUCTION IN CELLULOSIC BIOFUEL

[Million ethanol-equivalent gallons]

| | Required volumes without a reduction in cellulosic biofuel or advanced biofuel | Required volumes with a reduction in advanced biofuel equal to reduction in cellulosic |
|---|---|---|
| Cellulosic biofuel | 1,750 | 17 |
| Biomass-based diesel [a] | 1,920 | 1,920 |
| Other advanced biofuel [b] | 80 | 80 |
| Total advanced biofuel | 3,750 | 2,017 |

[a] Represents a physical volume of 1.28 bill gal biodiesel.

[b] Can include biomass-based diesel with a D code of 4 that is in excess of that required to meet the biomass-based diesel requirement of 1.28 bill gal, as well as any other forms of advanced biofuel with a D code of 5 such as renewable diesel, heating oil, biogas, and imported sugarcane ethanol.

This approach to setting the advanced biofuel volume requirement would minimize the impact of the advanced biofuel category on the supply problems associated with constraints on ethanol consumption. However this approach would ignore the availability of non-cellulosic advanced biofuel to fill the shortfall in cellulosic biofuel. It would reduce the market opportunities for other advanced biofuels (as compared to the other options), and thereby hinder the development of advanced biofuels that might otherwise help to meet the broader energy security and GHG reduction goals of Congress for the RFS program. Finally, as discussed below, this approach would result in greater reductions in advanced biofuel than are needed to account for the contribution of ethanol advanced biofuels to the blendwall. For these reasons, we invite comment on this approach but are not proposing it.

c. Option 3: Availability, Growth, and Limits on Ethanol Consumption

Neither Option 1 nor Option 2 address all the factors we believe are important in the determination of the applicable advanced biofuel volume requirement. For instance, under Option 1 (using just availability to determine the appropriate volume of advanced biofuel), the significant impacts of constraints on ethanol consumption and the factors leading to a reduction in the total volume of renewable fuel would not be reflected at all in our determination of the advanced biofuel requirement. On the other hand, under Option 2 (reducing the advanced biofuel requirement by the same amount that we reduce cellulosic biofuel), would impose unnecessary constraints on non-ethanol advanced biofuels even though they do not contribute to the constraints on the volume of ethanol that can reasonably be consumed.

For these reasons we are proposing a third option that would address these issues by first summing the applicable volume requirements for cellulosic biofuel and biomass-based diesel, and then adding available volumes of non-ethanol advanced biofuel, including any biodiesel in excess of the 1.28 bill gal requirement as well as other available non-ethanol advanced biofuels such as renewable diesel, heating oil, and biogas. Under this approach, we consider only non-ethanol sources of advanced biofuel as these fuels are not limited by their ability to be consumed as are ethanol blends. This approach would help to ensure that the advanced biofuel requirement would include all available volumes of advanced biofuel which do not contribute to the supply concerns related to constraints on ethanol consumption. It would also provide for additional growth in volumes of advanced biofuel that would otherwise be lost due to the shortfall in cellulosic biofuel. Once the advanced biofuel volume requirement was set, the market would determine which

[96] The 2.0 bill gal is composed of the proposed volume of biomass-based diesel, 1.92 bill gallons ethanol equivalent, and the remaining volume of non-cellulosic advanced biofuel, 0.08 bill gallons.

advanced biofuels would be produced and sold to meet the advanced biofuel requirement, including whether they would be ethanol or non-ethanol. Thus under this approach we would not be mandating or determining what renewable fuels would in fact be produced and sold.

We once again used a Monte Carlo approach to aggregate the ranges for cellulosic biofuel, biomass-based diesel, and non-ethanol advanced biofuel. The ranges and standardized distributions we used in this process are shown in Table IV.C.2.c–1, and the resulting distribution for advanced biofuel is shown in Figure IV.C.2.c–1.

TABLE IV.C.2.c–1—PROPOSED VOLUME RANGES FOR ESTIMATING ADVANCED BIOFUEL REQUIREMENT FOR 2014

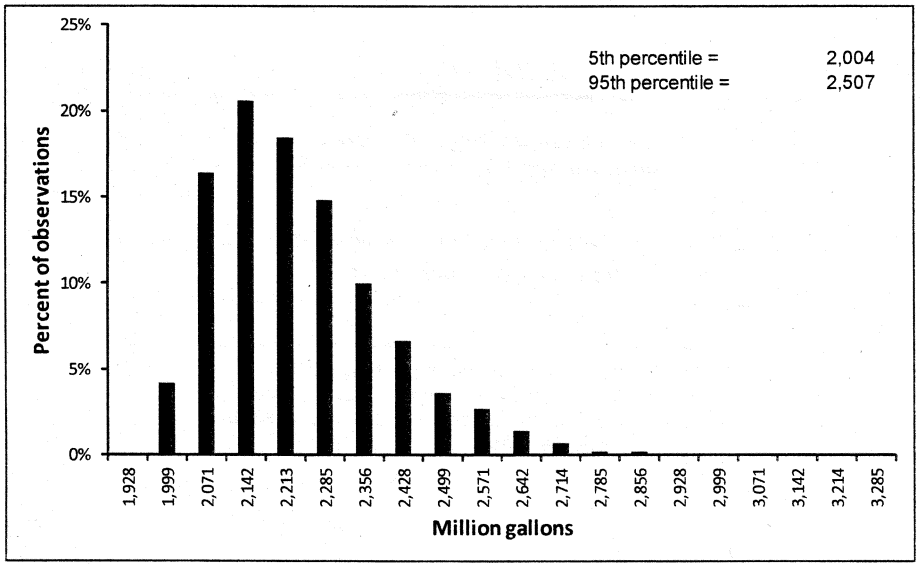
[Million ethanol-equivalent gallons]

| | | |
|---|---|---|
| Proposed requirement for cellulosic biofuel | 8–30 | Combined.[a] |
| Proposed requirement for biomass-based diesel | [b] 1,920 | n/a. |
| Available volumes of excess biomass-based diesel | [c] 0–480 | Half-normal. |
| Available volumes of domestic non-ethanol advanced biofuel | 24–132 | Normal. |

[a] As described in Section II.C, this distribution is a combination of the distributions for all facilities projected to produce cellulosic biofuel.
[b] Represents a physical volume of 1.28 bill gal.
[c] Represents a physical volume range of 0–320 mill gal.

Figure IV.C.2.c-1

Results of Monte Carlo Simulation for Advanced Biofuel Requirement




For the reasons discussed above, we propose that the advanced biofuel volume requirement would be set based on the Option 3 approach, within the range of 2.00–2.51 bill gal. Given that the volume requirement in the statute is 3.75 bill gal, this proposed range of advanced biofuel would represent a reduction of 1.24–1.75 bill gal. In comparison, the reduction in cellulosic biofuel that we are proposing in today's NPRM is 1.72–1.74 bill gal, and the reduction in total renewable fuel that we are proposing is 2.63–3.15 bill gal. The Option 3 approach to setting the advanced biofuel volume requirement would generate a volume that falls approximately midway between Options 1 and 2 for 2014.

The approach we are proposing in today's NPRM is based upon and fully consistent with the authorities provided in the statute for waiving volumes. The proposed reductions in the volumes of advanced biofuel and total renewable fuel derive from our determination that the industry and market will be unable to supply sufficient volumes in 2014 to meet the statutory mandates, either because of projected limitations in production and importation of qualifying renewable fuels, or projected limitations in the available infrastructure to ensure that those fuels are supplied to and consumed in the transportation sector. All of these limitations represent forms of inadequate supply and are permissible bases for exercising both the general waiver authority and the cellulosic waiver authority.

As for the required volume of total renewable fuel, there are a variety of ways in which a specific value within the proposed range can be chosen for the volume of advanced biofuel that we require in the final rule. The table below shows the values that correspond to the distribution in Figure IV.C.2.c–1 using several possible approaches.

TABLE IV.C.2.c–2—POTENTIAL APPROACHES TO DETERMINING THE FINAL ADVANCED BIOFUEL VOLUME REQUIREMENT

[Million ethanol-equivalent gallons]

| | |
|---|---|
| Mean | 2,202 |
| Mode | 2,099 |
| 25th percentile | 2,086 |
| 50th percentile | 2,178 |
| 75th percentile | 2,289 |

In today's NPRM we are proposing to use the mean value of 2,202 mill gal for the volume requirement for advanced biofuel because we believe it best represents a neutral aim at advanced biofuel volumes that could reasonably be supplied. However, we request comment on whether one of the alternative values shown in Table IV.C.2.c–2, or some other approach, would be more appropriate as the basis for the required volume of advanced biofuel in the final rule.

*D. Summary of Proposed Volume Requirements for 2014*

For the reasons discussed above, we are proposing the volumes of total renewable fuel and advanced biofuel as shown below.

TABLE IV.D–1—PROPOSED VOLUMES FOR 2014

[Billion gallons]

| | Statutory volume | Proposed volume | |
|---|---|---|---|
| | | Range | Mean |
| Advanced biofuel | 3.75 | 2.00–2.51 | 2.20 |
| Total renewable fuel | 18.15 | 15.00–15.52 | 15.21 |

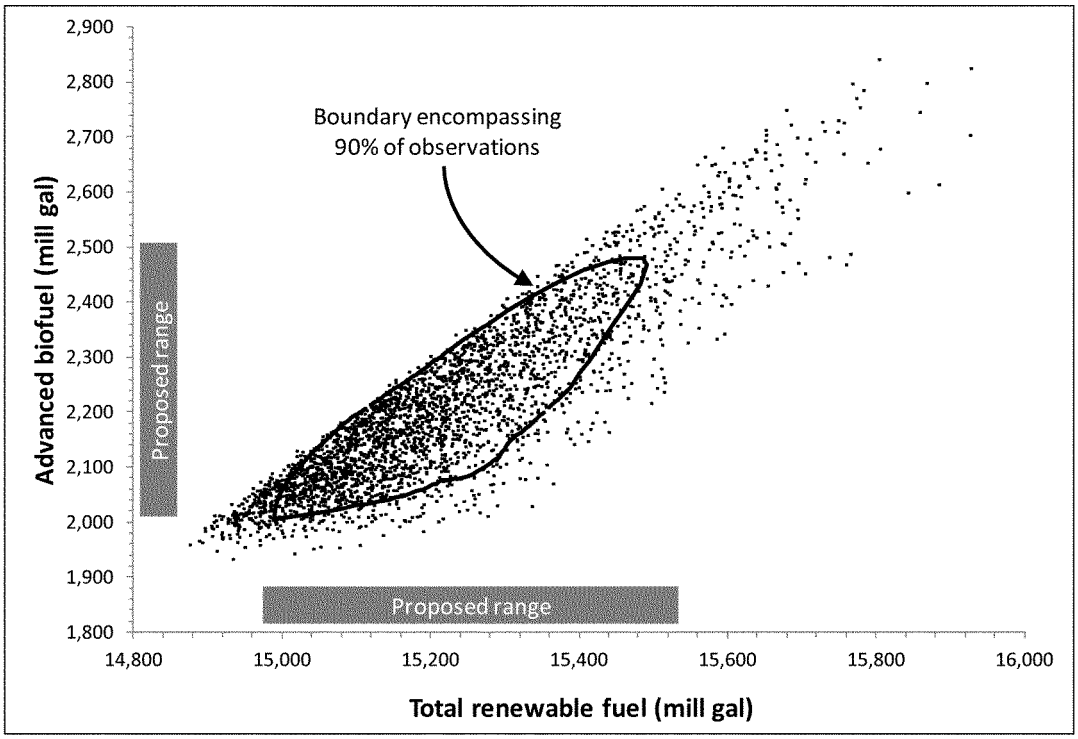
For the final rule, we may revise the ranges based on additional information that becomes available after publication of this NPRM. This information could include more recent Production Outlook Report required under § 80.1449, production and consumption data for 2013, and information from stakeholders.

With regard to the mean, we request comment on whether it is the most appropriate way to determine the volume within each of the ranges that we would require in the final rule, or whether instead one of the alternatives shown in Tables IV.B.4–3 or IV.C.2.c–2, or some other approach, would be more appropriate. Nevertheless, as described above, we do not believe that using either the low end or high end of the proposed ranges would be appropriate as the basis for the applicable standards. A value between the low and high ends would better account for cases in which the actual values for some of the input volumes fall at the high end of their respective ranges while the actual value of other input volumes fall at the low end of their ranges.

We note that the two ranges shown in Table IV.D–1 were not independently derived and thus cannot be treated independently from one another in the determination of the appropriate volumes to finalize. Many of the same ranges of biofuel availability that were used in estimating the range of total renewable fuel were also used in estimating the range of advanced biofuel. This fact can be seen in the distribution of results from the Monte Carlo process, which shows a distinct correlation between total renewable fuel and advanced biofuel.

Figure IV.D-1

Results of Monte Carlo Process for Both Total Renewable Fuel and Advanced Biofuel



Because of this correlation, decisions for both total renewable fuel and advanced biofuel need to take this relationship into account. For example, it would not be appropriate to finalize a volume for total renewable fuel that is at the high end of its proposed range, while also finalizing a volume for advanced biofuel that is at the low end of its proposed range. Doing so would result in a demand for renewable fuels that either could not be filled with available volumes or could not reasonably be consumed.

The ranges that we are proposing for advanced biofuel and total renewable fuel determine the range of non-advanced renewable fuel that would be needed. The majority of non-advanced renewable fuel is ethanol made from corn starch, though as discussed in Section IV.B.2.d we would also expect some non-ethanol renewable fuel as well, in the range of 1–25 mill gal. Taking this non-ethanol renewable fuel into account, we used the results of the Monte Carlo process that generated the ranges shown in Table IV.D–1 to determine that the volume of corn-ethanol that would be needed would be 12.94–13.07 bill gal. This range represents an increase in comparison to 2012 corn-ethanol consumption, which was about 12.5 bill gal.[97] While this range represents a reduction in comparison to the statutory volumes for 2014, it nonetheless represents an increase relative to projected 2013 corn-ethanol consumption of about 12.3 bill gal.[98] For comparison, this reduction in corn-ethanol volume for 2014 is about 90% of the size of the proposed reduction in advanced biofuel. Thus under our proposed approach, both non-advanced renewable fuels and advanced biofuels are contributing to the necessary reductions needed to attain renewable fuel volumes that can reasonably be supplied and consumed. We request comment on our proposed approach and on alternative approaches that may be applied to determine how best to allocate adjustments needed to address the constraints of both the ethanol blendwall and limitations in the availability of non-ethanol biofuels.

### *E. Volume Requirements for 2015 and Beyond*

In enacting the RFS program, Congress anticipated and intended to promote substantial, sustained growth in biofuel production and consumption—beyond the levels that have been achieved to date—though it did so in the context of forecasts of continually growing transportation fuel consumption. As explained in Section IV.B, gasoline demand has declined in the years since EISA was enacted in 2007 and is projected to continue to do so. As a result, the gasoline pool will be able to absorb about 2.3 bill gal less ethanol as E10 in 2014 than it would have been possible to absorb if the gasoline use projection in AEO2007 had been realized. While we recognize this change in circumstances, we continue to support the objective of continued growth in renewable fuel production and consumption, as well as the central policy goals underlying the RFS program: reductions in greenhouse gas emissions, enhanced energy security, economic development, and technological innovation. We recognize that the issues concerning availability of qualifying renewable fuels and the consumption of ethanol that are discussed above with respect to the 2014 RFS standards will continue to be relevant in 2015 and beyond. Our objective in this rulemaking is to develop a general approach for determining appropriate volume requirements that can be applied not only to 2014, but also for 2015 and beyond. Any such approach would, of course, fully consider comments received in response to this NPRM and would account for new and improved data and changes in relevant circumstances over time. As we have underscored throughout this proposal, we look forward to engagement with stakeholders on all relevant aspects of the proposed approach.

We believe that the general approach reflected in today's proposal is consistent with the goals of the underlying statute and will put the RFS program on a manageable trajectory while supporting continued growth in renewable fuels over time. In future years, we would expect to use the most recently available information to update the analyses used to project volumes in each of these areas:

- Volume of ethanol that could be consumed, including reasonably achievable growth in capacity to consume higher ethanol blends such as E15 and E85.
- Available volumes of cellulosic biofuel.
- Available volumes of biomass-based diesel.
- Available volumes of advanced biofuel.
- Available volumes of non-advanced renewable fuel.
- Amount of carryover RINs.

In addition to these factors, the approach we are proposing today would also account for changes in circumstances over time, including the substantial efforts underway to increase the volume of biofuel produced and consumed in the United States. Many companies are continuing to invest in efforts ranging from research and development to the construction of commercial scale facilities to increase the production potential of next generation biofuels. Many of these projects have received financial support from government agencies:

- DOE's ARPA–E program, which aims to advance high-potential, high-impact energy technologies that are too early for private sector investment, and DOE's Integrated Biorefinery Program, which provides grants and works in partnership with industry to develop, build, operate, and validate integrated biorefineries at various scales at locations across the country.[99] DOE invests more than $200 million annually on technology development aimed at enabling cost-competitive advanced biofuels, including cellulosic ethanol, renewable gasoline, diesel, and aviation fuel. DOE has also awarded over $1 billion since 2007 for 27 integrated biorefinery projects intended to de-risk first-of-a-kind technologies at pilot, demonstration, and commercial scale.
- USDA's Biorefinery Assistance Program, which provides loan guarantees for the development and construction of commercial scale biorefineries, is another example.[100] Many of these new projects are focused on producing non-ethanol fuels, including bio-based hydrocarbons (gasoline, diesel, and jet fuel), gaseous fuels (CNG and LNG), or more energy-dense alcohols such as butanol.
- President Obama's directive to USDA, DOE, and the Navy to collaborate with the private sector to spur a ''drop-in'' biofuels industry to meet the transportation needs of the Department of Defense (DOD) and the private sector. This multi-agency effort potentially establishes the federal government as an early market adopter of these biofuels, demonstrating their potential bankability for commercial markets. DOD made four $5M, 18-month phase 1 awards in June 2013. Successful projects will be selected to go on to

[97] EIA Monthly Energy Review for June 2013, Table 10.3. Corn-ethanol exports were about 740 mill gal in 2012 based on EIA Exports By Destination.

[98] EIA AEO2013, Table17. Assumes corn-ethanol exports of 885 mill gal per EIA.

[99] For more information on these programs visit their Web sites at: *http://arpa-e.energy.gov/* and *http://www1.eere.energy.gov/bioenergy/integrated_biorefineries.html.*

[100] On October 21st USDA announced that an additional $181 million would be available through the Biorefinery Assistance Program. For more information visit the program's Web site at: and *http://www.rurdev.usda.gov/BCP_Biorefinery.html.*

Phase II construction to be jointly supported by the three agencies in the beginning of fiscal year 2015.

In addition to these efforts at other agencies, EPA is currently evaluating a number of new pathways to allow these fuels to generate RINs under the RFS program if the applicable feedstock, fuel type, and greenhouse gas reduction requirements are met. As these new fuels and fuel volumes come online, the proposed methodology will automatically incorporate them into the development of the standards for the following year.

Simultaneously, efforts are underway to increase the availability, awareness, and acceptance of gasoline fuel blends containing greater than 10 percent ethanol as expanded consumption of this fuel could play a role in the future. For instance, EPA has taken a series of regulatory steps to enable E15 to be sold in the U.S. In 2010 and 2011, EPA issued partial waivers to enable use of E15 in model year 2001 and newer vehicles, and in June of 2011, EPA finalized regulations to prevent misfueling of vehicles, engines, and equipment not covered by the partial waiver decisions. Other federal and state agencies have also taken steps to help foster the inclusion of E15 in the marketplace. We recognize that there remain a number of obstacles to increased E15 consumption. We request comment on what actions, on the part of government as well as industry and other stakeholders, could be taken to overcome these obstacles and to enable E15 consumption to increase.

With regard to E85, the portion of the estimated 11.5 million FFV fleet (in 2013) [101] having reasonable access to the existing E85 retail infrastructure (approximately 3,000 stations nationwide) represents a potential market of over 1 bill gal of E85 consumption.[102] While there are many factors that may contribute to a customer's choice of which fuel to purchase, a recent study by the National Association of Convenience Stores found that for 71% of customers, price was the most important factor in their decision on where to purchase their fuel.[103] Historically, E85 has been more expensive than E10 on an energy-content adjusted basis which has likely been a key factor in the low sales volumes. Recent data collected by EIA suggests that at least in some parts of the country the price relationship between E10 and E85 may be changing. In a Today in Energy article published on September 19, 2013, EIA presented data showing that in a collection of Midwestern states E85 retail prices were less than E10 retail prices on an energy-content adjusted basis in July 2013, the most recent month for which information was available.[104] This change in price relationship between E10 and E85 coincides with reported increases in sales volumes of E85 in Iowa and Minnesota, two states in which E85 sales volumes are publically available.[105] If the conditions that have led to this price relationship continue in the future, E85 sales volumes are likely to continue to increase.

In addition to the potential for increased consumption of E85 when considering the existing infrastructure and vehicle fleet, there is also substantial opportunity to increase ethanol consumption in higher level ethanol blends through growth in the FFV fleet and E85 infrastructure. The number of stations offering E85 is currently increasing at a rate of approximately 300 new stations per year.[106] In 2012 USDA announced a goal to help retail station owners install as many as 10,000 ethanol blender pumps by 2017.[107] Growth Energy has a ''Blend Your Own Ethanol'' program to encourage the installation of ethanol blender pumps. These efforts, combined with the potential for these higher level ethanol blends to decrease consumer fuel costs in the future under appropriate market circumstances, could lead to a significant increase in the amount of ethanol than can be consumed as a transportation fuel in the United States in future years. As a benchmark, if every FFV currently in the fleet had access to E85 and chose to use it exclusively, the total consumption of these vehicles would be approximately 8 bill gal per year. The size of the FFV vehicle fleet also continues to increase, and is expected to grow by approximately 1 million vehicles from 2013 to 2014, with sales recently in excess of 2 million vehicles per year.[108] [109] EPA's recently proposed credit for vehicle manufacturers under the light-duty greenhouse gas standards could help encourage the continuation such sales into the future.[110] Ongoing growth in the size of the FFV fleet and the number of E85 pumps could be accelerated by increases in demand from customers for E85 fuel, which has the potential to support a rapid growth in E85 infrastructure. Under the proposed framework for the 2014 standards, any such growth in capacity for ethanol consumption would continuously be reflected in the standards set for the following year.

At the same time, we recognize that a number of challenges must be overcome in order to fully realize the potential for higher levels of production and consumption of higher-level ethanol blends and of renewable fuels generally in the United States. We also recognize that, while the RFS program is a central element of our domestic biofuels policy, a range of other tools, programs, and actions have the potential to play an important complementary role. We request comment on what actions could be taken by various industry and other private stakeholders, as well by the government, to help overcome these challenges and to minimize the need for adjustments in the statutory renewable fuel volume requirements in the future.

## V. Proposed Percentage Standards for 2014

### *A. Background*

The renewable fuel standards are expressed as volume percentages and are used by each refiner or importer to determine their RVO. Since there are four separate standards under the RFS2 program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all gasoline and diesel produced or imported. The applicable percentage standards are set so that if every obligated party meets the percentages, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel used will meet the volumes required on a nationwide basis.

As discussed in Section II.C, we are proposing a required volume of cellulosic biofuel for 2014 of 17 million

[101] EIA Annual Energy Outlook 2013, Table 40. Sum of Ethanol-Flex Fuel ICE Cars and Light Trucks.

[102] Memorandum from David Korotney to EPA docket EPA–HQ–OAR–2013–0479.

[103] 2013 NACS Retail Fuels Report.

[104] ''E85 motor fuel is increasingly price-competitive with gasoline in parts of the Midwest.'' *Today in Energy*. EIA, 19 September 2013. <*http://www.eia.gov/todayinenergy/detail.cfm?id=13031*>. Study compared daily average observed E85 and regular gasoline prices at the same stations in the states of Iowa, Illinois, Indiana, Kentucky, Michigan, Minnesota, and Ohio.

[105] See Table IV.B.1–2

[106] Memorandum from David Korotney to EPA docket EPA–HQ–OAR–2013–0479.

[107] *http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2012/05/0141.xml.*

[108] EIA Alternative Fuel Vehicle Data Report. Released May 4, 2012.

[109] EIA Annual Energy Outlook 2013, Table 40. Increase in Ethanol-Flex Fuel Cars and Light Trucks from 2013 to 2014.

[110] Draft Guidance Letter, CD–13–XX (LD), ''E85 Flexible Fuel Vehicle Weighting Factor for Model Year 2016–2019 Vehicles,'' *http://epa.gov/otaq/regs/ld-hwy/greenhouse/ld-ghg.htm#action.*

ethanol-equivalent gallons. The volume we select for the final rule will be used as the basis for setting the percentage standard for cellulosic biofuel for 2014. We are also proposing to reduce the advanced biofuel and total renewable fuel volumes. The biomass-based diesel volume for 2014 has been proposed to be maintained at 1.28 billion gallons. The volumes to be used to determine the four proposed percentage standards are shown in Table V.A–1.

TABLE V.A–1—PROPOSED VOLUMES FOR USE IN SETTING THE APPLICABLE PERCENTAGE STANDARDS FOR 2014 [a]

| | |
|---|---|
| Cellulosic biofuel | 17 mill gal. |
| Biomass-based diesel | 1.28 bill gal. |
| Advanced biofuel | 2.20 bill gal. |
| Renewable fuel | 15.21 bill gal. |

[a] Due to the manner in which the percentage standards are calculated, all volumes are given in terms of ethanol-equivalent except for biomass-based diesel which is given in terms of physical volume.

As with previous years' renewable fuels standards determination, the formulas used in deriving the annual standards are based in part on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, that are projected to be used in the year in which the standards will apply. Producers of other transportation fuels, such as natural gas, propane, and electricity from fossil fuels, are not subject to the standards, and volumes of such fuels are not used in calculating the annual standards. Since the standards apply to producers and importers of gasoline and diesel, these are the transportation fuels used to set the standards, and then again to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

*B. Calculation of Standards*

1. How are the standards calculated?

The following formulas are used to calculate the four percentage standards applicable to producers and importers of gasoline and diesel (see § 80.1405):

$$\mathrm{Std}_{\mathrm{CB,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{CB,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{BBD,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{BBD,\,i}} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{AB,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{AB,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{RF,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{RF,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$\mathrm{Std}_{\mathrm{CB,i}}$ = The cellulosic biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{BBD,i}}$ = The biomass-based diesel standard (ethanol-equivalent basis) for year i, in percent.

$\mathrm{Std}_{\mathrm{AB,i}}$ = The advanced biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{RF,i}}$ = The renewable fuel standard for year i, in percent.

$\mathrm{RFV}_{\mathrm{CB,i}}$ = Annual volume of cellulosic biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{BBD,i}}$ = Annual volume of biomass-based diesel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{AB,i}}$ = Annual volume of advanced biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{RF,i}}$ = Annual volume of renewable fuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$G_i$ = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

$D_i$ = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons. This value excludes diesel used in ocean-going vessels.

$RG_i$ = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

$RD_i$ = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

$GS_i$ = Amount of gasoline projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

$RGS_i$ = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

$DS_i$ = Amount of diesel projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

$RDS_i$ = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

$GE_i$ = Amount of gasoline projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively. For 2014, this value is zero. See further discussion in Section V.B.2 below.

$DE_i$ = Amount of diesel projected to be produced by exempt small refineries and

small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively. For 2014, this value is zero. See further discussion in Section V.B.2 below.

The four separate renewable fuel standards for 2014 are based on the gasoline and diesel consumption volumes projected by EIA. The Act requires EPA to base the standards on an EIA estimate of the amount of gasoline and diesel that will be sold or introduced into commerce for that year. The projected volumes of gasoline and diesel that will be used to calculate the final 2014 percentage standards will be provided to EPA by EIA. To estimate the gasoline and diesel projected volumes for the purposes of this proposal, we have used EIA's Short-Term Energy Outlook (STEO) [111] for the gasoline projection and EIA's Annual Energy Outlook 2013 Early Release [112] for the diesel projection. Gasoline and diesel volumes are adjusted to account for renewable fuel contained in the EIA projections. The projected volumes of ethanol and biodiesel used to calculate the final percentage standards will be provided to EPA by EIA. To estimate the ethanol and biodiesel projected volumes for the purposes of this proposal, we have used the values [113] for ethanol and biodiesel provided in the STEO. Using the most recent available EIA data for purposes of this proposal allows us to provide the affected industries with a reasonable estimate of the standards for planning purposes.

2. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, Congress provided a temporary exemption to small refineries (those refineries with a crude throughput of no more than 75,000 barrels of crude per day) through December 31, 2010. In our initial rulemaking to implement the new RFS program,[114] we exercised our discretion under section 211(o)(3)(B) and extended this temporary exemption to the few remaining small refiners that met the Small Business Administration's (SBA) definition of a small business (1,500 employees or less company-wide) but did not meet the statutory small refinery definition as noted above.[115] Because EISA did not alter the small refinery exemption in any way, the RFS2 program regulations maintained the exemptions for gasoline and diesel produced by small refineries and small refiners through 2010 (unless the exemption was waived).[116]

Congress provided two ways that small refineries could receive a temporary extension of the exemption beyond 2010. One was based on the results of a study conducted by the Department of Energy (DOE) to determine whether small refineries would face a disproportionate economic hardship under the RFS program. In March of 2011, DOE evaluated the impacts of the RFS program on small entities and concluded that some small refineries would suffer a disproportionate hardship.[117] The other way that small refineries could receive a temporary extension is based on EPA determination of disproportionate economic hardship on a case-by-case basis in response to refiner petitions.[118] EPA has granted some exemptions pursuant to this process, as recently as 2013. However, at this time, no exemptions have been approved for 2014. Therefore, for this proposal we have calculated the 2014 standards without a small refinery/small refiner adjustment.

However, if an individual small refinery or small refiner requests an exemption and is approved prior to issuance of the final rule, the final standards will be adjusted to account for the exempted volumes of gasoline and diesel. Any requests for exemptions that are approved after the release of the final 2014 RFS standards will not affect the 2014 standards. As stated in the final rule establishing the 2011 standards, ''EPA believes the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their regulatory requirements. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.'' Thus, after the 2014 standards are finalized, any additional exemptions for small refineries or small refiners that are issued will not affect those 2014 standards.

3. Proposed Standards

As specified in the March 26, 2010 RFS2 final rule,[119] the percentage standards are based on energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the biomass-based diesel standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. For example, the RFS2 regulations provide that production or import of a gallon of qualifying biodiesel will lead to the generation of 1.5 RINs. In order to ensure that demand for 1.28 billion physical gallons of biomass-based diesel will be created in 2014, the calculation of the biomass-based diesel standard provides that the required volume be multiplied by 1.5. The net result is a biomass-based diesel gallon being worth 1.0 gallon toward the biomass-based diesel standard, but worth 1.5 gallons toward the other standards.

The levels of the percentage standards would be reduced if Alaska or a U.S. territory chooses to participate in the RFS2 program, as gasoline and diesel produced in or imported into that state or territory would then be subject to the standard. Neither Alaska nor any U.S. territory has chosen to participate in the RFS2 program at this time, and thus the value of the related terms in the calculation of the standards is zero.

Note that because the gasoline and diesel volumes estimated by EIA include renewable fuel use, we must subtract the total renewable fuel volumes from the total gasoline and diesel volumes to get total non-renewable gasoline and diesel volumes. The values of the variables described above are shown in Table V.B.3–1.[120] Terms not included in this table have a value of zero.

TABLE V.B.3–1—VALUES FOR TERMS IN CALCULATION OF THE STANDARDS [121]

[bill gal]

| Term | Value |
|---|---|
| $RFV_{CB,2014}$ | 0.017 |
| $RFV_{BBD,2014}$ | 1.28 |
| $RFV_{AB,2014}$ | 2.20 |

[111] Energy Information Administration/Short-Term Energy Outlook—September 2013, Table 4a, ''U.S. Crude Oil and Liquid Fuels Supply, Consumption, and Inventories.''

[112] Energy Information Administration/Annual Energy Outlook 2013, April 2013, ''Energy Consumption by Sector and Source, United States, Reference case; Transportation Distillate Fuel Oil.''

[113] Energy Information Administration/Short-Term Energy Outlook—September 2013, Table 8, ''U.S. Renewable Energy Consumption (Quadrillion Btu).''

[114] 72 FR 23900, May 1, 2007.

[115] 40 CFR §§ 80.1141, 80.1142.

[116] See 40 CFR §§ 80.1441, 80.1442.

[117] ''Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship,'' U.S. Department of Energy, March 2011.

[118] 40 CFR §§ 80.1441(e)(2), 80.1442(h).

[119] 75 FR 14716, March 26, 2010.

[120] To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska is subtracted from the totals provided by DOE. The Alaska fractions are determined from the most recent EIA State Energy Data System (SEDS), Energy Consumption Estimates.

TABLE V.B.3–1—VALUES FOR TERMS IN CALCULATION OF THE STANDARDS [121]—Continued

[bill gal]

| Term | Value |
|---|---|
| $RFV_{RF,2014}$ | 15.21 |
| $G_{2014}$ | 132.65 |
| $D_{2014}$ | 47.12 |
| $RG_{2014}$ | 13.12 |
| $RD_{2014}$ | 1.38 |

Using the volumes shown in Table V.B.3–1, we have calculated the proposed percentage standards for 2014 as shown in Table V.B.3–2.

TABLE V.B.3–2—PROPOSED PERCENTAGE STANDARDS FOR 2014

| | |
|---|---|
| Cellulosic biofuel | 0.010% |
| Biomass-based diesel | 1.16% |
| Advanced biofuel | 1.33% |
| Renewable fuel | 9.20% |

## VI. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

*A. How do I submit comments?*

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated under the **DATES** section above. If you have an interest in the proposed standards, we encourage you to comment on any aspect of this rulemaking. We also request comment on specific topics identified throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Commenters are especially encouraged to provide specific suggestions for any changes that they believe need to be made. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES** section above) by the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit Confidential Business Information (CBI) or information that is otherwise protected by statute, please follow the instructions in Section VI.B below.

*B. How should I submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through the electronic public docket, *www.regulations.gov*, or by email. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105, Attention Docket ID EPA–HQ–OAR–2013–0479. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comments that include any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

## VII. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is a ''significant regulatory action'' as set forth under Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action. A determination has not been reached, however, with regard to whether this action is ''economically significant'' under Executive Order 12866. Such a determination will be made for the final rule.

The economic impacts of the RFS2 program on regulated parties, including the impacts of the volumes of renewable fuel specified in the statute, were analyzed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670). With the exception of biomass-based diesel, this action proposes standards applicable in 2013 that would be reduced from those analyzed in the RFS2 final rule. The impacts of the proposed 2014 and 2015 volumes of biomass-based diesel were addressed in the final rule establishing the 2013 volume requirement of 1.28 bill gal (77 FR 59458).

*B. Paperwork Reduction Act*

There are no new information collection requirements associated with the standards in this notice of proposed rulemaking. The standards being proposed today would not impose new or different reporting requirements on regulated parties. The existing information collection requests (ICR) that apply to the RFS program are sufficient to address the reporting requirements in the regulations.

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 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act 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. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a

[121] U.S. Gasoline (October 2013 STEO) = 8.67 MMbbl/day; U.S. Ethanol (October 2013 STEO) = 0.858 MMBD calculated as 1.115 QBtu; U.S. Transportation Distillate (AEO2013) = 6.55 QBtu; U.S. Biodiesel (October 2013 STEO) = 0.09 MMBD calculated as 0.176 QBtu; U.S. Diesel Ocean-going vessels (AEO2013) = 52.429 TBtu; Alaska (SEDS 2011): AK Gasoline = 6.321 MMbbl, AK Ethanol = 0.733 MMbbl; AK Diesel = 7.621 MMbbl, AK Biodiesel = 0, AK Ocean-going vessels estimated at 4.5% of U.S. vessel bunkering and applied to the U.S. ocean-going vessel volume.

population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, we certify that this proposed action will not have a significant economic impact on a substantial number of small entities. This rulemaking proposes that the annual volume requirement for cellulosic biofuel for 2014 would be reduced from the statutory volume of 1.75 bill gal. We are also proposing to reduce the annual volume requirements for advanced biofuel and total renewable fuel. The impacts of the RFS2 program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this proposed rule will not impose any additional requirements on small entities beyond those already analyzed. However, we continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action implements mandate(s) specifically and explicitly set forth by the Congress in Clean Air Act section 211(o) without the exercise of any policy discretion by EPA. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and merely proposes the 2014 annual standards for the RFS program.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes the 2014 annual standards for the RFS program and only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this rulemaking.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific standards established by Congress in statutes (section 211(o) of the Clean Air Act).

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action simply proposes the annual standards for renewable fuel under the RFS program for 2014.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

## VIII. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's proposal, come from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. sections 7414, 7542, and 7601(a).

**List of Subjects in 40 CFR Part 80**

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable Fuel.

Dated: November 18, 2013.

**Gina McCarthy,**

*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 80 is proposed to be amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7542, 7545, and 7601(a).

■ 2. Section 80.1405 is amended by adding paragraph (a)(5) to read as follows:

### § 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(5) *Renewable Fuel Standards for 2014.*

(i) The value of the cellulosic biofuel standard for 2014 shall be 0.010 percent.

(ii) The value of the biomass-based diesel standard for 2014 shall be 1.16 percent.

(iii) The value of the advanced biofuel standard for 2014 shall be 1.33 percent.

(iv) The value of the renewable fuel standard for 2014 shall be 9.20 percent.

[FR Doc. 2013–28155 Filed 11–27–13; 8:45 am]

BILLING CODE 6560–50–P

# FEDERAL REGISTER

Vol. 78 Friday,

No. 230 November 29, 2013


Part III

## Department of Transportation

Federal Railroad Administration

49 CFR Parts 238 and 239

Passenger Train Emergency Systems II; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Parts 238 and 239**

**[Docket No. FRA–2009–0119, Notice No. 2]**

**RIN 2130–AC22**

## Passenger Train Emergency Systems II

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule is intended to further the safety of passenger train occupants through both enhancements and additions to FRA's existing requirements for emergency systems on passenger trains. In this final rule, FRA is adding requirements for emergency passage through vestibule and other interior passageway doors and enhancing emergency egress and rescue access signage requirements. FRA is also establishing requirements for low-location emergency exit path markings to assist occupants in reaching and operating emergency exits, particularly under conditions of limited visibility. Further, FRA is adding standards to ensure that emergency lighting systems are provided in all passenger cars, and FRA is enhancing requirements for the survivability of emergency lighting systems in new passenger cars. Finally, FRA is clarifying requirements for participation in debriefing and critique sessions following emergency situations and full-scale simulations.

**DATES:** This final rule is effective January 28, 2014. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 28, 2014. Petitions for reconsideration must be received on or before January 28, 2014. Comments in response to petitions for reconsideration must be received on or before March 14, 2014.

**ADDRESSES:** *Petitions for reconsideration:* Petitions for reconsideration related to Docket No. FRA–2009–0119, Notice No. 2, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the Web site's online instructions for submitting comments, to include petitions for reconsideration.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all petitions and comments received will be posted without change to *http://www.regulations.gov,* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

*Docket:* For access to the docket to read background documents, any petition for reconsideration submitted, or comments received, go to *http://www.regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, Room W12–140 on the ground level of the West Building, 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:** Michael Masci, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6037); Michael Hunter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–0368); or Brenda Moscoso, Director, Office of Safety Analysis, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., RRS–20, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6282).

**SUPPLEMENTARY INFORMATION:**

### Abbreviations Frequently Used in This Document

CFR Code of Federal Regulations
FRA Federal Railroad Administration
U.S.C. United States Code

### Table of Contents for Supplementary Information

I. Executive Summary
II. History
  A. Statutory Background
  B. Implementation of the 1994 Passenger Equipment Safety Rulemaking Mandate
  C. Tasking of Passenger Safety Issues to the Railroad Safety Advisory Committee
  D. 2008 Passenger Train Emergency Systems Final Rule
  E. Passenger Train Emergency Systems II Rulemaking
III. Discussion of Specific Comments and Conclusions
IV. Technical Background and General Overview of Final Rule Requirements
  A. Doors
  B. Identification of Emergency Systems
  C. Emergency Lighting
  D. Marking and Instructions for Emergency Egress and Rescue Access
  E. Low-Location Emergency Exit Path Marking
  F. Photoluminescent Marking Materials
  G. Emergency Communications
  H. Debriefing and Critique Session Following Emergency Situations and Full-Scale Simulations
V. Section-by-Section Analysis
  A. Amendments to Part 238, Subparts B, C, and E
  B. Amendments to Part 239, Subpart B
VI. Regulatory Impact and Notices
  A. Executive Orders 12866 and 13563, and DOT Regulatory Policies and Procedures
  B. Regulatory Flexibility Act and Executive Order 13272
  C. Paperwork Reduction Act
  D. Federalism Implications
  E. Environmental Impact
  F. Unfunded Mandates Reform Act of 1995
  G. Trade Impact
  H. Privacy Act

### I. Executive Summary

Having considered the public comments in response to FRA's January 3, 2012, proposed rule on passenger train emergency systems, *see* 77 FR 153, FRA issues this final rule amending the Passenger Equipment Safety Standards, 49 CFR part 238, and the Passenger Train Emergency Preparedness regulations, 49 CFR part 239. This rule establishes enhanced or new requirements related to the following subject areas: doors, emergency lighting, markings and instruction for emergency egress and rescue access, emergency communication, low-location emergency exit path markings, and debriefing and critique of emergency situations and simulations. As part of these amendments, FRA is incorporating by reference three American Public Transportation Association (APTA) standards for passenger train emergency systems. A brief overview of the final rule is provided below, organized by subject area:

*Door Emergency Egress and Rescue Access Systems*

This rule as it relates to vestibule doors (and other interior passageway doors) requires such doors in new passenger cars to be fitted with a removable panel or removable window for use in accessing and exiting the passenger compartment through the vestibule in the event that the vestibule door is inoperable. Additionally, FRA is establishing distinct requirements for bi-parting vestibule doors (and other bi-parting, interior passageway doors),

including provisions for a manual override and retention mechanisms. For security reasons, an exception is included to allow railroads discretion when deciding whether to include a removable panel or removable window in a door leading to a cab compartment. This rule also sets forth requirements for the inspection, testing, reporting, and repairing of the door safety mechanisms.

*Emergency Lighting*

This rule establishes requirements for minimum emergency light illumination levels within all passenger cars, supplementing requirements that have applied generally to new passenger cars. The rule also provides standards for the number and placement of power sources for the emergency lighting system in newer cars and specifies requirements for testing lighting fixtures and power sources that are part of the emergency lighting system for all cars.

Emergency lighting power sources that include batteries located under passenger cars may not be reliable following a collision or derailment due to their location. This rule helps to ensure that in both new and certain existing passenger cars these essential back-up power sources are able to function as intended by requiring that the batteries are located in the passenger compartment, where they are better protected.

*Emergency Communications*

This rule makes clear that public address (PA) and intercom systems on newer passenger cars are required to have back-up power to remain operational for at least 90 minutes when the primary power source fails. This rule also establishes more specific requirements for the luminescent material used to mark intercoms, enhancing regulations that have required the location of each intercom to be clearly marked with luminescent material.

*Emergency Egress and Rescue Access Markings and Instructions*

This rule enhances current signage requirements by specifying requirements for signage recognition, design, location, size, color and contrast, and materials used for emergency exits and rescue access locations. This additional detail helps to ensure that emergency egress points and systems can be easily identified and operated by passengers and train crewmembers needing to evacuate a passenger car during an emergency. The enhancements also help to ensure that emergency response personnel can easily identify rescue access points and then facilitate their access to the passenger car. This rule establishes more comprehensive requirements for marking emergency roof access locations and providing instructions for their use to facilitate emergency responder access to passenger cars.

*Photoluminescent Materials*

Specifically, the rule enhances requirements related to the use of high-performance photoluminescent (HPPL) material, i.e., a photoluminescent material that is capable of emitting light at a very high rate and for an extended period of time, as well as policies and procedures for ensuring proper placement and testing of photoluminescent materials. These revisions are intended to help ensure greater visibility of signage and markings in an emergency situation so that train occupants can identify emergency exits and the path to the nearest exit in conditions of limited visibility, which include, but are not limited to conditions when all lighting fails, or when smoke is present in the passenger car. Existing emergency egress signage inside some passenger compartment areas within passenger cars has been ineffective due to its inability to absorb sufficient levels of ambient or electrical light. The requirements in this rule improve the conspicuity of signage and markings in the passenger compartment, and thus increase the discernability of the exit signs and markings.

*Low-Location Emergency Exit Path Marking (LLEEPM)*

This rule establishes minimum requirements for photoluminescent and electrically-powered LLEEPM systems to provide visual guidance for passengers and train crewmembers when the emergency lighting system has failed or when smoke conditions obscure overhead emergency lighting. The rule also requires railroads to conduct periodic inspections and tests to verify that all LLEEPM system components, including power sources, function as intended.

*Debriefing and Critique*

FRA is modifying the existing debriefing and critique requirements to clarify that passenger train personnel who have first-hand knowledge of an emergency involving a passenger train are intended to participate in a debriefing and critique session after the emergency, or an emergency simulation, occurs.

*Economic Impact*

FRA has assessed the cost to railroads that is expected to result from the implementation of this rule. For the 20-year period analyzed, the estimated quantified cost that will be imposed on industry totals $21.8 million, with a present value (PV, 7 percent) of $13.4 million.

20-YEAR COST FOR FINAL RULE

| | |
|---|---|
| Door Removable Panels or Windows, and Bi-Parting Doors | $4,399,223 |
| Emergency Lighting | 2,450,213 |
| Emergency Egress and Rescue Access Marking and Instructions | 4,730,631 |
| Low-Location Emergency Exit Path Markings | 1,377,615 |
| Debriefing and Critique | N/A |
| Inspection, Testing, and Recordkeeping | 405,296 |
| Total | $13,362,979 |

Dollars are discounted at a present value rate of 7 percent.

This rule is expected to improve railroad safety by promoting the safe resolution of emergency situations involving passenger trains, including the evacuation of passengers and crewmembers in the event of an emergency. The primary benefits include a heightened safety environment for egress from a passenger train and rescue access by emergency response personnel after an accident or other emergency. This corresponds to a reduction of casualties and fatalities in the aftermath of collisions, derailments, and other emergency situations. FRA believes the value of the anticipated safety benefits will justify the cost of implementing this rule.

## II. History

*A. Statutory Background*

In September 1994, the Secretary of Transportation (Secretary) convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Public Law 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Congress also authorized the Secretary to consult with various organizations

involved in passenger train operations for purposes of prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of the Act (codified at 49 U.S.C. 20133).

*B. Implementation of the 1994 Passenger Equipment Safety Rulemaking Mandate*

On May 4, 1998, pursuant to Section 215 of the Act, FRA published the Passenger Train Emergency Preparedness (PTEP) final rule. *See* 63 FR 24629. This rule contains minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including freight railroads hosting the operations of passenger rail service. Elements of the required emergency preparedness plan include: communication; employee training and qualification; joint operations; tunnel safety; liaison with emergency responders; on-board emergency equipment; and passenger safety information. The rule also established specific requirements for passenger train emergency systems. The requirements include: Conspicuous marking of all emergency window exits with luminescent material on the interior, along with instructions provided for their use, and marking on the exterior of all windows intended for rescue access by emergency responders with retroreflective material, along with instructions provided for their use; lighting or marking of all door exits intended for egress on the interior along with instructions for their use; and marking of all door exits intended for rescue access by emergency responders, on the exterior along with providing instructions for their use. In addition, the rule contains specific requirements for participation in debrief and critique sessions following emergency situations and full-scale simulations.

On May 12, 1999, FRA published the Passenger Equipment Safety Standards (PESS) final rule. *See* 64 FR 25540. The rule established comprehensive safety standards for railroad passenger equipment. The standards established various requirements for emergency systems, including requirements for the size, location, and operation of exterior side doors used for emergency egress or access for all passenger cars and for emergency lighting for new passenger cars. After publication of the PESS final rule, interested parties filed petitions seeking FRA's reconsideration of certain requirements contained in the rule. These petitions generally related to the following subject areas: Structural design; location of emergency exit windows; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. To address the petitions, FRA grouped issues together and published three sets of amendments to the final rule in 2000 and 2002. *See* 65 FR 41284; 67 FR 19970; and 67 FR 42892.

*C. Tasking of Passenger Safety Issues to the Railroad Safety Advisory Committee*

While FRA had completed these rulemakings, FRA had identified various issues for possible future rulemaking, including those to be addressed following the completion of additional research, the gathering of additional operating experience, or the development of industry standards, or all three. FRA decided to address these issues with the assistance of the Railroad Safety Advisory Committee (RSAC). FRA established the RSAC in March 1996, and it serves as a forum for developing consensus recommendations on rulemakings and other safety program issues. The RSAC includes representation from all of the agency's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO);
American Association of State Highway and Transportation Officials (AASHTO);
American Chemistry Council;
American Petroleum Institute;
APTA;
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of American Railroads (AAR);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employes Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
Chlorine Institute;
Federal Transit Administration (FTA);*
Fertilizer Institute;
High Speed Ground Transportation Association (HSGTA);
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement (LCLAA);*
League of Railway Industry Women;*
National Association of Railroad Passengers (NARP);
National Association of Railway Business Women;*
National Conference of Firemen & Oilers;
National Railroad Construction and Maintenance Association;
National Railroad Passenger Corporation (Amtrak);
National Transportation Safety Board (NTSB);*
Railway Supply Institute (RSI);
Safe Travel America (STA);
Secretaria de Communicaciones y Transporte (Mexico);*
Sheet Metal Workers International Association (SMWIA);
Tourist Railway Association Inc.;
Transport Canada;*
Transport Workers Union of America (TWU);
Transportation Communications International Union/BRC (TCIU/BRC);
Transportation Security Administration;* and
United Transportation Union (UTU).

* Indicates associate membership.

(Please see 77 FR 156 for additional discussion of the RSAC process.)

On May 20, 2003, FRA presented the RSAC with the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service. In turn, the RSAC accepted the task and established the Passenger Safety Working Group (Working Group) to handle the task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, include the following:

AAR, including members from BNSF Railway Company, CSX Transportation, Inc., and Union Pacific Railroad Company;
APRCO;
AASHTO;
Amtrak;
APTA, including members from: Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology Inc., Long Island Rail Road (LIRR), Metro-North Commuter Railroad Company (Metro-North), Northeast Illinois Regional Commuter Railroad Corporation (Metra), Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA);
BLET;
BRS;
FTA;
HSGTA;
IBEW;
NARP;
NTSB;
RSI;
SMWIA;
STA;
TCIU/BRC;
TWU; and
UTU.

The Working Group met 14 times between September 9, 2003, and September 16, 2010. Staff from DOT's John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the Working Group meetings and

contributed to the technical discussions. See 77 FR 157. Due to the variety of issues involved, at its November 2003 meeting, the Working Group established four task forces: Emergency Systems, Vehicle/Track Interaction, Crashworthiness/Glazing, and Mechanical. Each task force was formed as a smaller group to develop recommendations on specific issues within each group's particular area of expertise. Members of the Emergency Systems Task Force (Task Force), in addition to FRA, include (or have included) the following:

Amtrak;
APTA, including members from Bombardier, Ellcon National, Go Transit, Interfleet Technology, Inc, Jacobs Civil Engineering, Jessup Manufacturing Company, Kawasaki Rail Car, Inc., LIRR, LTK, Luminator, Maryland Transit Administration, Massachusetts Bay Transportation Authority (MBTA), Metrolink, Metro-North, Northern Indiana Commuter Transit District (NICTD), SEPTA, San Diego Northern Commuter Railroad (Coaster), Permalight, Po's Ability USA, Inc., Prolink, Transit Design Group (TDG),Transit Safety Management (TSM), Translite, STV Inc., and Visual Marking Systems, Inc.;
BLET;
California Department of Transportation (Caltrans);
FTA;
NARP;
RSI, including Globe Transportation Graphics;
TWU; and
UTU.

Representatives from TSA, of the U.S. Department of Homeland Security (DHS), while an advisory member and not a voting member of the Task Force, attended certain meetings and contributed to the discussions of the Task Force. In addition, staff from the Volpe Center attended all of the meetings and contributed to the technical discussions through their comments and presentations and by setting up various lighting, marking, and signage demonstrations.

The Task Force held 17 meetings between February 25, 2004, and March 31, 2009. Associated with these meetings were site visits where FRA met with representatives of Metrolink, MBTA, Amtrak, LIRR, Coaster, SEPTA, and Caltrans, respectively, and toured their passenger equipment. See 77 FR 157–158. The visits were open to all members of the Task Force (and Working Group) and included a demonstration of emergency system features. As in the case of Working Group visits to Metra and the South Florida Regional Transportation Authority, FRA believes they have added to the collective understanding of RSAC members in identifying and addressing passenger train safety issues for not only this rulemaking, but for other RSAC initiatives as well.

*D. 2008 Passenger Train Emergency Systems Final Rule*

With the RSAC's assistance, FRA published a final rule on Passenger Train Emergency Systems (PTES) on February 1, 2008. *See* 73 FR 6370. The rule addressed a number of concerns raised and issues discussed during the various Task Force and Working Group meetings, and was a product of the RSAC's consensus recommendations. The rule expanded the applicability of requirements for PA systems to all passenger cars, and also expanded the applicability of requirements for intercom systems and emergency responder roof access to all new passenger cars. Further, the rule enhanced requirements for emergency window exits and established requirements for rescue access windows used by emergency responders. *See* 73 FR 6370.

*E. Passenger Train Emergency Systems II Rulemaking*

To address additional concerns raised, and issues discussed, during the various Task Force and Working Group meetings, FRA initiated the Passenger Train Emergency Systems II (PTES II) rulemaking. In addition to clarifying the nature of participation in debriefing and critique of emergency situations and full-scale simulations, the purpose of the rulemaking was to address the following emergency systems: door emergency egress and rescue access, emergency lighting, marking and instruction for emergency egress and access, emergency communication, and low-location emergency exit path markings. The Working Group reached full consensus on recommendations related to these emergency systems and issues at its December 11, 2007 meeting. The Working Group presented its consensus recommendations to the full RSAC body for concurrence at its meeting on February 20, 2008. All of the members of the full RSAC body in attendance at that February 2008 meeting accepted the regulatory recommendations submitted by the Working Group. Thus, the Working Group's recommendations became the full RSAC body's recommendations to FRA. FRA subsequently met with the Task Force twice after that to make some non-substantive technical clarifications and review technical research findings related to potential enhancements of emergency systems. A Tier II sub-task force also met to discuss the requirements affecting Tier II equipment, *i.e.,* passenger equipment operating at speeds in excess of 125 mph but not exceeding 150 mph. This sub-task force did not recommend any changes to the recommendation. After reviewing the full RSAC body's recommendations, FRA agreed that the recommendations provided a sound basis for a rule and adopted the recommendations with generally minor changes for purposes of clarity and **Federal Register** formatting. On January 3, 2012, FRA published a notice of proposed rulemaking (NPRM), and opened the comment period. 77 FR 154.

## III. Discussion of Specific Comments and Conclusions

FRA received nine comments in response to the NPRM during the comment period from the following parties: Metra, Caltrans, NTSB, City of Seattle, students from the Quinnipiac University School of Law (the Students), and four individual commenters. FRA appreciated and carefully considered all comments. The comments generally raised issues related to doors, emergency lighting, emergency markings, and instructions for emergency egress and rescue access. FRA also received comments that were outside the scope of this rule. The final rule text differs from the proposed rule in part because of the concerns raised by Metra in relation to the emergency lighting requirement. Please note that the order in which the comments are discussed in this document is not intended to reflect the significance of the comment raised or the standing of the commenter.

Please also note that following the issuance of the NPRM and the close of the comment period, as part of improvements to the APTA Standards Program, APTA comprehensively changed the numbering nomenclature for its standards, including the standards FRA proposed to incorporate by reference in this rule. However, these nomenclature changes do not affect the substantive content or the revision histories of the standards FRA proposed to incorporate in this rule. Accordingly, in this final rule FRA has updated the numbering nomenclature of these APTA standards as follows:

| Standard title | Previous standard No. | New standard No. |
|---|---|---|
| Standard for Emergency Lighting System Design for Passenger Cars, Rev. 1, October 2007 | SS–E–013–99 | PR–E–S–013–99 |
| Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment, Rev. 3, October 2007. | SS–PS–002–98 | PR–PS–S–002–98 |
| Standard for Low-Location Exit Path Marking, Rev. 2, October 2007 | SS–PS–004–99 | PR–PS–S–004–99 |

Metra submitted comments stating that the proposed emergency lighting requirement, which would incorporate by reference APTA Standard PR–E–S–013–99 (previously SS–E–013–99), Rev. 1, ''Standard for Emergency Lighting Design for Passenger Cars,'' October 2007, would require Metra to expend $4,700,000.00 to bring its equipment into compliance with the rule as proposed. When the NPRM was published, Metra had 386 cars that would have been considered non-compliant under the rule as proposed. Metra provided FRA with a schedule for bringing the cars into compliance. While Metra supports the emergency lighting requirement, it suggests that the applicability date be extended two years until January 1, 2017, to allow Metra to bring its 386 cars into compliance. Metra also believes that extending the applicability date would allow additional research and development that may yield an industry-wide standard with added benefits of energy and maintenance savings. To mitigate the expense of compliance and permit time for additional research and development, FRA is modifying the proposal related to the emergency lighting requirement to phase-in compliance. The phased-in compliance schedule requires that by December 31, 2015, railroads retrofit 70% of their passenger cars that are not in compliance with the emergency lighting requirements as of the date of publication of the final rule, and that by January 1, 2017, all cars comply with the emergency lighting requirements.

Caltrans submitted comments stating that the proposed requirement that vestibule doors and certain other interior doors be equipped with removable panels is confusing based on the examples that are provided in the NPRM and Caltrans's understanding of the Working Group's discussions and agreements related to this issue. Caltrans points out that based on the examples, it appears that end-frame doors would be required to be equipped with a removable panel, while noting that the definition of vestibule door that is contained in § 238.5 excludes an end-frame door. Caltrans suggests that this is confusing, because there was no agreement within the Working Group to require end-frame doors to be equipped with a removable panel.

FRA agrees that, at this time, removable panels or windows should not be required in end-frame doors because, ultimately, no design was identified that would address three overriding concerns related to end-frame doors. Those concerns are: (1) unintentional removal of the panel or window, which would result in a safety hazard for occupants while the train is in operation; (2) crashworthiness of the door containing the panel or window; and (3) prevention of fluids, such as fuel, from entering the car during an accident. Therefore, the Task Force developed a recommendation that was limited to vestibule doors, and certain other interior passageway doors. An interior passageway door is a door used to pass through a passenger car to the vestibule to exit the car from a side door exit or to pass through the car to exit the car into an adjoining car, or both. In addition to end-frame doors, doors separating sleeping compartments or similar private compartments from a passageway are neither vestibule doors nor other interior passageway doors. FRA believes that the examples that are provided in the NPRM have caused inadvertent confusion about this issue. FRA did not intend to propose a requirement to equip end-frame doors with a removable panel or window, and FRA does not intend to establish such a requirement in this final rule.

To clarify the removable panel or window requirement related to vestibule doors and certain other interior passageway doors, the following example supersedes and replaces the examples that were provided in the NPRM. Amtrak Acela Express (Acela) passenger cars that are not at the end of the train consist have no end-frame doors, as the cars are semi-permanently coupled to other Acela passenger cars (not the power cars). In the case of two business class cars that are coupled together in the interior of the consist, moving from one of these passenger cars to the next, an occupant would pass the end-frame (collision posts/corner posts), then pass through the vestibule where there are exterior side door exits, and, depending on the end of the car, move through a passageway adjacent to a restroom accessible under the Americans with Disabilities Act (ADA) before arriving at an interior bi-parting door that leads to the seating area. Because that interior door does not directly lead to the vestibule when moving from the seating area, but to the passageway where the ADA-accessible restroom is located and then to the vestibule, the door is an interior passageway door but not a vestibule door. Certain foreign trainsets have a similar layout that includes interior passageway doors that are not vestibule doors.

The NTSB submitted a comment that recounts the various safety recommendations issued by the NTSB following the February 16, 1996, collision of two passenger trains near Silver Spring, MD, and the status of many of those recommendations. The comment states that FRA has addressed many of the recommendations through its various rulemakings, but highlights that two of the recommendations—Safety Recommendation R–97–15, regarding removable windows, kick panels, or other suitable means for emergency exiting through interior and exterior passageway doors where the door could impede passengers exiting in an emergency; and R–97–17, regarding fitting each emergency lighting fixture with a self-contained independent power source—are currently classified as ''Open–Unacceptable Response.'' The comment notes that proposed § 238.112, ''Door emergency egress and rescue access systems,'' and the proposed revisions to § 238.115, ''Emergency lighting,'' are considered consistent with the intent of Safety Recommendations R–97–15, and R–97–17, respectively. While the NTSB stated that it is ''encouraged that the various actions indicated in the NPRM are under consideration'' and expresses support for the intent of the NPRM, the comment noted that it is unfortunate that no design changes have yet been required for passenger car doors or emergency lighting more than 17 years after the Silver Spring accident. The NTSB also commented that it ''remains concerned about the significant length of time it is taking to make a modification available to [railroad] operators.''

In response to the Silver Spring accident, FRA has focused on some of

the broader issues of passenger train safety, emergency egress and rescue access, to ensure that there is a means of egress and rescue access in every passenger compartment of a passenger rail car. With respect to NTSB's specific concerns related to passenger car doors, FRA points out that it has required design changes in Tier II passenger trains. In the 1997 PESS NPRM, FRA stated that for Tier II passenger equipment that is operated as a fixed unit, having kick-panels to allow emergency egress through the length of the train has merit, so long as the panels do not interfere with the normal operation of the doors in which they are installed. 62 FR 49735. As such, in the 1999 PESS final rule, FRA required that Tier II passenger railroads must equip passenger compartment end doors (other than those leading to the exterior of the train) with removable windows or kick-panels, unless the doors have a negligible probability of becoming inoperable. 64 FR 25642, 25689. For Tier I passenger rail cars, FRA stated in the 1997 PESS NPRM that ''the interchangeable use of some cab cars and MU locomotives as leading and trailing units on a Tier I passenger train will complicate analyzing the efficacy of installing such panels on Tier I equipment,'' and reserved the issue for future consideration. 62 FR 49735. FRA is not aware of any design changes that would safely mitigate the additional safety concerns raised by requiring kick-panels or other removable panels or windows in doors leading to the exterior of a passenger car, such as end-frame doors, as discussed above.

With respect to emergency lighting, FRA required in the 1999 PESS final rule that new passenger cars have a ''back-up power feature capable of operating the lighting for a minimum of 90 minutes after loss of normal power.'' *See* 64 FR 25598. This back-up feature assists occupants of the rail cars to discern their immediate surroundings and thereby minimize or avoid panic in an emergency, if normal lighting is lost, because fully-equipped emergency response forces can take an hour or more to arrive at a remote accident site, with additional time required to deploy and reach people trapped or injured in a train. Even passenger train emergencies in urban areas can pose significant rescue problems, especially in the case of tunnels, and operations during hours of limited visibility or inclement weather. In either situation, emergency lighting should help emergency responders extricate occupants that may be injured and assist with an orderly evacuation. FRA also addressed design concerns in the 1999 PESS final rule and stated that its ''findings in recent accidents support NTSB's implied concern that placement of electrical conduits and battery packs below the floor of passenger coaches can result in damage that leads to the unavailability of emergency lights precisely at the time they are most needed,'' but that ''the concept of a power source at each fixture, as a regulatory requirement, is novel.'' 64 FR 25598. Moreover, FRA questioned ''whether current 'ballast' technology provides illumination of sufficient light level quality with reliable maintainability.'' 64 FR 25598. FRA therefore reserved the issue of independent power sources for future consideration.

While this final rule is being issued many years after the Silver Spring accident, the underlying concerns expressed by NTSB in issuing recommendations R–97–15 and R–97–17 have not gone unaddressed; rather, they have been reflected in FRA final rules issued following this accident, as codified in FRA regulations. For example, the 2008 PTES final rule established requirements that improve passenger emergency egress and rescue access that are consistent with the intent of NTSB's recommendations. Specifically, the rulemaking enhanced the emergency window exits requirements, established roof access requirements, and added rescue access window requirements to improve the means by which occupants can quickly and safely egress when exit doors are inoperable or inaccessible. *See* 73 FR 6376–78. During the development of the 2008 PTES final rule, FRA realized that there was a potential safety gap in the then-existing regulatory requirements that could result in passenger trains not being equipped with rescue access windows. The requirements established by the 2008 PTES rulemaking, which considered NTSB's recommendations, remedy this potential safety gap. In this regard, FRA has been actively addressing the underlying concerns expressed by NTSB recommendations R–97–15 and R–97–17 since they were issued.

The City of Seattle submitted comments suggesting that FRA consider adding roof access requirements for passenger cars. The NPRM did not raise the issue of roof access for passenger cars, other than for their marking and instructions for their use. Accordingly, FRA believes that the City of Seattle's comment is outside of the scope of this rulemaking proceeding to the extent it concerns the development of more substantive requirements for roof access systems. However, FRA believes that roof access is an important safety feature for passenger cars, and it is addressed by FRA regulation at §§ 238.123 and 238.441.

The 2008 PTES final rule established a roof access requirement for all new passenger cars by adding § 238.123, ''Emergency roof access,'' requiring that all new passenger cars be equipped with two roof access locations (roof hatches or structural weak points). Section 238.441 continues to contain specific requirements for Tier II passenger equipment. *See* 73 FR 6403. FRA recognizes that roof access locations can be especially useful in emergency situations where passenger cars have rolled onto their sides following certain collision and derailment scenarios. All else being equal, car rollover or tilt should result in more severe injuries than when a car remains upright, as occupants may be thrown greater distances inside the car. In turn, this risk increases the potential need for access to rescue the car's occupants because of the reduced likelihood that the occupants can evacuate the car on their own. In addition, when there is a rollover, doors, which are the preferred means of access under normal circumstances, may be blocked or otherwise rendered inoperable due to structural damage to the door or the door pocket. In particular, end doors, which due to the direction they face, would normally be better suited for use than side doors when a car has tilted or rolled onto its side, may also be blocked, jammed, or otherwise unavailable for use. Moreover, although emergency responders may be able to enter a car that is on its side via a rescue access window, the removal of an injured occupant through a side window in such circumstances can be difficult or complicated, especially depending upon the condition of the occupant. Nonetheless, the Task Force that helped to develop the existing requirements determined that having more than two roof access locations could jeopardize the structural integrity of passenger cars.

At this time, FRA believes that the requirements contained in §§ 238.123 and 238.441 adequately address the important need for roof access for passenger cars. FRA is therefore not modifying or expanding the existing regulations based on this comment, other than for enhancing requirements for the marking of roof access locations and provision of instructions for their use.

The Students submitted comments stating that they agree with many aspects of the NPRM, but they also have

general concerns related to: The door panel requirement; the emergency lighting requirement; the emergency communications requirement; and the cost of the rulemaking. The Students recommend requiring removable panels or removable windows in vestibule doors and other interior passageway doors to be shatter-proof. While FRA believes that such a regulatory requirement would be too prescriptive at this time, the potential maintenance and replacement costs associated with removable panels or windows that shatter during normal operations will drive the industry to use sufficiently shatter-resistant materials. In fuller context, of course, these removable panels or removable windows are to be used as one of a number of possible means of egress.

The Students also ask whether a floor hatch may be an effective alternative method for emergency egress. FRA believes that a floor hatch would likely cause a tripping hazard when not in use, and further believes that it may present significant challenges to maintaining the integrity of the carbody structure, and its design. Openings large enough for egress though the carbody underframe would have a greater impact on the structural integrity of the car than the soft spots on the roof and windows/doors on the sides of the car that are currently required. In addition, a floor hatch may reduce the ability of the car to protect passengers from an under-car fire and, as such, would be inconsistent with FRA's fire safety regulations. *See, e.g.,* appendix B to part 238, note 16, concerning fire resistance requirements for the structural flooring assembly separating the interior of a vehicle from its undercarriage.

The Students further suggest supplementing the required emergency lighting with a hearing sensory device that will guide passengers and train crews to emergency exits when the emergency lighting is obscured by smoke. FRA believes that the addition of a hearing sensory device for safety purposes may be reasonable, but it was not part of FRA's proposal in the NPRM. FRA would need to pursue this suggestion in a future rulemaking with full notice and comment, including the gathering of information related to the capabilities and cost of such devices, as well as power supply needs.

In addition, the Students commented in favor of requiring an automated safety announcement played by the on-board train crew each time new passengers board the train. Such announcements may be worthwhile for some operations. However, FRA has addressed this type of passenger safety awareness requirement in the Passenger Train Emergency Preparedness rule, codified at § 239.101(a)(7), and believes that each railroad is in the best position to decide which additional required safety awareness medium to use—one of which is on-board announcements—in conjunction with the conspicuous positing of emergency procedures.

The last comment from the Students raises concerns about the costs of implementing the rule. FRA believes that the costs of investing in the safety systems required by this rule should have a nominal impact on ticket fares. According to the APTA Fact Book for 2012, all capital investment is funded only by government funds, and capital investment is defined as expenses related to the purchase of equipment. Passenger railroads have a dedicated funding source for capital investment that can be used to implement certain requirements of this rule. FRA recognizes that there may be an indirect impact on passenger fares due to potential increases in maintenance costs for the upkeep of the new safety systems. However, users of passenger rail take into account many things when determining their mode of transportation, in addition to fare price. Many value avoidance of traffic congestion associated with driving, or the convenience of being able to read or work. For peak-hour commuters who are less responsive to fare changes, it would take a significant increase in fares for such riders to switch modes of travel.

As part of their comment, the Students also sought clarification as to the costs associated with enforcing the rule as proposed. By law, FRA is responsible for promoting the safety of railroads throughout the Nation, and FRA's enforcement policy is carried out through the support of its approximately 470 Federal inspectors and technical specialists who also coordinate their efforts with approximately 172 State inspectors. These inspectors work with railroads, shippers of hazardous materials, and other regulated entities to help ensure a safe railroad environment. The Students recommended random inspections to verify proper installation and use of the new systems that would be required by the proposed rule. FRA and State inspectors routinely conduct inspections of railroad operations, property, and records to determine that safety is being properly maintained. Unannounced inspections are an important part of their work. Consequently, any costs associated with the enforcement of this and other regulations have been accounted for in FRA's budgeting process, and will not be impacted due to the issuance of this regulation.

One individual submitted a comment suggesting that FRA require an independent power source for illuminated exit signs in the event that an accident disrupts the normal power supply to a car. In the NPRM, FRA proposed to incorporate by reference APTA Standard PR–PS–S–002–98 (previously SS–PS–002–98), ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' October 2007. The APTA standard specifically requires that emergency exit signs and markings located on vestibule, end-frame, and side-door exits leading to the outside of the passenger car for emergency egress have electrically powered fixtures that have an independent power source to power either the internally illuminated sign, or the light fixture that is externally illuminating the non-HPPL sign when there is disruption to the normal power supply to the car. FRA notes that alternatively under this standard, railroads are able to employ HPPL material that provides an adequate level of conspicuity, when there is disruption to the normal power supply to a car, and this specifically includes dual-mode HPPL signs.

Wherever illumination from the normal lighting system is less than required for charging, dual-mode sign systems can be used to achieve greater conspicuity. Dual-mode signs have an active component (an active light source to properly charge the HPPL) and a passive component (the HPPL material itself). FRA notes that the use of HPPL material would obviate the need for an independent power source, as the properly charged HPPL material will luminesce, and in-turn, provide the desired conspicuity under conditions of limited visibility or darkness, when there is a disruption to the normal power supply to a car. Moreover, the emergency lighting requirement that was also proposed in the NPRM, incorporating APTA Standard PR–E–S–013–99 (previously SS–E–013–99), ''Standard for Emergency Lighting Design for Passenger Cars,'' October 2007, is being retained in the final rule, which helps to ensure that the independent power source is effective when the normal power supply to a car is disrupted.

Another individual submitted comments stating that the proposed rule is extremely warranted, highlighting the general need for emergency exit lighting. In addition, this commenter disagrees with providing passengers the ability to apply the emergency brake whenever they deem it necessary,

although the NPRM did not raise this issue. As such, FRA believes that this comment is outside of the scope of this rulemaking proceeding. Making the emergency brake accessible to passengers is a longstanding industry practice and an important safety feature that was codified as a Federal regulatory requirement for all passenger cars in 1999. *See* 64 FR 25540. FRA is not modifying the existing regulation based on this comment.

Two comments in favor of the proposed changes that are contained in the NPRM were received from two other individual commenters. Both stated that the proposed rule is a good idea because it will enhance passenger rail safety and it should be adopted as a final rule. FRA appreciates the positive feedback and has considered it in the formulation of this final rule.

## IV. Technical Background and General Overview of Final Rule Requirements

Experience with passenger train accidents and simulations of emergency situations, and technological advances in emergency systems are the main impetus for the enhancements and additions in this final rule to FRA's existing requirements related to passenger train emergency systems, as highlighted below.

### *A. Doors*

In February 1996, as a result of a near head-on collision between a Maryland Mass Transit Administration MARC (MARC) train and an Amtrak train in Silver Spring, MD, and subsequent fire, eight passengers and three crewmembers died in one car. This incident raised concerns that at least some of the passengers in the MARC train tried unsuccessfully to exit via the exterior side doors in the rear vestibule of the lead, passenger-occupied cab car. Following its post-collision investigation, the NTSB expressed concern regarding passengers' ability to exit through interior and exterior passageway doors. During the accident, the front end of the cab car that led the MARC train suffered extensive structural damage, and fire destroyed the controls for the left- and right-side rear exterior doors. The left-side exterior door's interior emergency release handle was also damaged by the fire and could not be pulled down to operate the door. The right-side door's interior emergency release handle was in a secured cabinet in the lavatory and it failed to open the door when later tested by the NTSB. The NTSB did note in its investigation report of the Silver Spring train collision that ''[e]xcept for those passengers who died of blunt trauma injuries, others may have survived the accident, albeit with thermal injuries, had proper and immediate egress from the car been available.'' NTSB/RAR–97/02 at page 63. NTSB explained in its explicit findings on the collision that ''the emergency egress of passengers was impeded because the passenger cars lacked readily accessible and identifiable quick-release mechanisms for the exterior doors, removable windows or kick panels in the side doors, and adequate emergency instruction signage.'' *Id.* at 73.

Specifically, NTSB recommended that FRA ''[r]equire all passenger cars to have either removable windows, kick panels, or other suitable means for emergency exiting through the interior and exterior passageway doors where the door could impede passengers exiting in an emergency and take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards.'' R–97–15. In addition, in the development of this rulemaking, the Task Force identified concerns related to door egress from a car that is not upright. Emergency egress simulations organized by the Volpe Center confirmed this. Such simulations at the FRA-funded ''roll-over rig,'' an emergency evacuation simulator located at the Washington Metropolitan Area Transit Authority's (WMATA) training facility, demonstrated that egress from a passenger rail car that is not upright can be very challenging. The simulations have demonstrated that emergency egress from a car that is on its side could present a significant challenge related to the operation of the pocket doors. If the pocket for a door is situated on the side of the car that is above the door when the car comes to rest on its side, gravity would work against opening the door and maintaining it in place for occupants to egress. Although passenger rail cars with single-panel vestibule doors are usually designed such that on the two ends of a car the pockets are on opposite sides of the panel, emergency situations may affect either end of the car rendering one or more of the vestibule and end-frame doors unavailable for emergency egress. In addition, doors could be rendered inoperable due to structural deformation of the doors or their frames and surrounding structures following a collision or derailment, blocking the egress pathways.

The Task Force gave thoughtful consideration to the issue of vestibule and end-frame door egress. With assistance from the Task Force, FRA explored the feasibility of designing removable panels or windows in passenger car interior passageway doors and exterior end-frame doors that could be used for emergency egress, and funded research to develop and evaluate various designs. Interior door egress was examined first. In some passenger cars, exterior side or end-frame doors, or both, are located in vestibule areas that are separated from the seating area(s) by a vestibule door. Structural deformation or malfunctioning of vestibule doors could inhibit or unduly delay egress to the vestibules from the passenger compartments. End-frame door egress was examined next. Ultimately, no design was identified that would address three overriding concerns related to end-frame doors: (1) Unintentional removal of the panel or window, which present a clear safety hazard for occupants while the train is in operation; (2) crashworthiness of the door containing the panel or window; and (3) prevention of fluids, such as fuel, from entering the car during an accident. Therefore, the Task Force developed a recommendation that was limited to vestibule doors and other interior passageway doors. For new passenger cars, the Task Force generally recommended requiring a removable panel or removable window in each vestibule door and other interior passageway doors. In the case of a vestibule, for example, occupants could use a removable panel or removable window in the vestibule door to gain access from the seating area to the exterior doors in the vestibule. Alternatively, this panel or window could also facilitate passage in the opposite direction from the vestibule area to the seating area. Given the unique circumstances surrounding passenger train accidents, the Task Force considered it prudent to recommend that access be available from both areas.

The Task Force specifically evaluated kick-panels and ultimately decided that such panels could be partially or fully removed unintentionally, creating a safety hazard, particularly for small children who could get caught in the opening and become injured by the door sliding into its pocket. For security reasons, the Task Force also recommended an exception to the removable panel or removable window requirement for a vestibule door that leads directly into a cab compartment. The Task Force believed that each railroad is best situated to determine whether equipping such a vestibule door with a removable panel or removable window would be

appropriate for its specific equipment and operation.

In particular, FRA believes that to require vestibule doors to be equipped with a removable panel or removable window will, in the event that vestibule doors are not operable, provide a means for occupants in the passenger seating area to reach the vestibule area where exterior doors are located, facilitating their egress. Additionally, the removable panel or removable window will provide an additional means for emergency responders to access the passenger seating area to aid and assist occupants. FRA further believes that the rule satisfies the safety concerns expressed in the NTSB's recommendation without raising other safety concerns both during normal operations and in emergency situations.

The Task Force considered requiring that existing passenger cars be retrofitted to comply with the removable panel/window requirement for vestibule and other interior passageway doors. Because of limitations posed by the design of existing doors, the Task Force decided not to recommend that the equipment be retrofitted. For example, vestibule doors are designed with a horizontal structural member, located approximately at the vertical center of the door, which provides rigidity. The design would significantly limit both the size and location of a properly functioning removable panel or removable window. Although there are existing windows in the upper half of certain vestibule doors, the windows are not sufficiently large for adults to pass through and would be difficult to access in many situations. In addition, the existing door pockets would require modification. Removable windows would likely be designed similarly to emergency windows that are equipped with a handle to facilitate the removal of the gasket that holds the emergency window in place. The doors would need to be modified to accommodate the protrusions in the door that would be created by adding the handle. The Task Force also reviewed additional issues related to the emergency operation of these doors and developed recommendations applicable to manual override devices and bi-parting doors, including door retention systems, which are addressed in this final rule.

As noted above, the Task Force also examined the emergency egress issue as it relates to exterior end-frame doors. After much deliberation, the Task Force recommended not to proceed with a removable window or panel requirement for end-frame doors, due to remaining concerns related to the crashworthiness of the exterior end-frame doors, the prevention of fluids entering the passenger car in an accident, and unintentional removal of the panel or window while the train is in operation. These concerns remain. The Task Force did, however, extend the removable window or panel requirement to ''any other interior door used for passage through a passenger car'' to further expand options for emergency egress, as well as rescue access.

The Task Force also reviewed the APTA emergency signage standard, as discussed below, to develop recommendations for sign and instruction marking to assist passengers and crewmembers in locating and operating removable panels and windows in vestibule and other interior passageway doors, as well as operating bi-parting vestibule and other interior passageway doors in an emergency situation.

*B. Identification of Emergency Systems*

An overturned rail car, or a rail car located on a narrow bridge or in a tunnel can greatly complicate passenger train evacuation in an emergency situation. Evacuation can be further complicated when multiple rail cars are affected, or when conditions of limited visibility or adverse weather are present. Such circumstances necessitate enhanced systems for use in emergency evacuations. The 1999 PESS rule highlighted a systems approach to effective passenger train evacuation that takes into consideration the interrelationship between features such as the number of door and window exits in a passenger car, lighted signs that indicate and facilitate the use of the door and window exits, and floor exit path marking, in addition to the general emergency lighting level in a car. 64 FR 25598. In particular, in the PESS final rule FRA stated that it was investigating emergency lighting requirements, as part of a systems approach to effective passenger train evacuation.

As FRA was issuing comprehensive Federal requirements for passenger train safety in the late 1990s, APTA was also developing and authorizing complementary passenger rail equipment safety standards applicable to equipment operated by its commuter and intercity passenger railroad members. In this regard, FRA stated in the 1999 PESS final rule that it would examine the APTA emergency lighting standard to determine whether the standard satisfactorily addresses matters related to emergency signage, exit path marking, and egress capacity. *See* 64 FR 25598. Through the development and issuances of multiple standards, APTA developed a systems-based approach to facilitate the safe evacuation of a passenger car in an emergency under various circumstances. These APTA standards, which address emergency lighting, signage, and low-location exit path markings, were designed to work together to provide a means for passengers and crewmembers to identify, reach, and operate passenger car emergency exits.

The most recent, revised versions of the APTA standards, all authorized on October 7, 2007, are listed below; copies are included in the docket.

- PR–E–S–013–99 (previously SS–E–013–99), Rev. 1, Standard for Emergency Lighting System Design for Passenger Cars.
- PR–PS–S–002–98 (previously SS–PS–002–98), Rev. 3, Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment.
- PR–PS–S–004–99 (previously SS–PS–004–99), Rev. 2, Standard for Low-Location Exit Path Marking.[1]

The APTA approach recognizes that, in the majority of emergencies, the safest place for passengers and crewmembers is to remain on the train. Should evacuation from a particular rail car be required, the safest course of action for passengers and crewmembers is normally to move into an adjacent car. This evacuation strategy avoids or minimizes the hazards inherent with evacuating passengers onto the railroad right-of-way. It is only in unavoidable or life-threatening situations that it would be necessary for passengers and crewmembers to leave the train to reach a place of safety.

The Task Force was charged with reviewing the three APTA standards and recommending revisions that would enhance the existing emergency lighting requirements contained in § 238.115 and the window egress and rescue access marking requirements contained in §§ 238.113 and 238.114, respectively. In addition, the Task Force was charged with adding a new requirement for LLEEPM systems. After careful review, the Task Force recommended that the three APTA standards be revised to address relevant advances in technology, and that these standards be incorporated by reference in their entirety in Federal regulations. With assistance from the Task Force, and an investment of considerable time and

[1] Please note that although the title of the APTA standard does not contain the word ''emergency,'' FRA considers low-location exit path markings and low-location emergency exit path markings to be one in the same for purposes of this final rule and can be used interchangeably. For ease of reference, both terms are referred to with the acronym ''LLEEPM.''

effort, APTA revised the three standards to enable FRA to incorporate them by reference and take advantage of certain technological advances that allow for certain other desired enhancements. In addition, the Task Force recommended applying the requirements of APTA's emergency lighting, emergency signage, and LLEEPM standards (as revised in 2007), to both new and existing equipment. Incorporation by reference of these APTA standards into part 238 extends their applicability to all commuter and intercity passenger railroads and makes them enforceable by FRA. FRA has reviewed these industry standards and has determined that they contain appropriate specifications for passenger train emergency systems to be incorporated into this final rule.

*C. Emergency Lighting*

Section 238.115 has contained emergency lighting requirements applicable for new passenger cars since the 1999 PESS final rule. As noted in that final rule, experience gained from emergency response to several passenger train accidents indicated that emergency lighting systems either did not work or failed after a short time, greatly hindering rescue operations. *See* 64 FR 25596. Emergency lighting system failures, or low levels of illumination during these accidents, or both, have been cited as a cause for confusion and contributing to injuries and casualties in emergency situations. For example, according to the NTSB report, two passengers in a coach car of the MARC train involved in the 1996 Silver Spring, MD, accident stated that emergency lighting was not available following the accident and that, along with one passenger's injuries and another's loss of eyeglasses, made it more difficult to move in the darkness. *See* NTSB/RAR–97/02 at 61–62. The coach car's tilted position also contributed to their disorientation and hindered mobility. *Id.* at 62. Post-accident investigation by the NTSB also revealed that the main car battery powering the emergency lighting had been damaged as a result of the derailment. *Id.*

The NTSB expressed concern regarding emergency lighting survivability because the location of the battery supplying power to the emergency lighting system below the car made it susceptible to damage from the rail, the car's trucks, and the ground surface in the event of a derailment. The NTSB concluded that ''a need exists for Federal standards requiring passenger cars be equipped with reliable emergency lighting fixtures with a self-contained independent power source when the main power supply has been disrupted to ensure passengers can safely egress.'' *Id.* The NTSB issued recommendation R–97–17 to FRA, as follows:

> Require all passenger cars to contain reliable emergency lighting fixtures that are each fitted with a self-contained independent power source and incorporate the requirements into minimum passenger car safety standards.

In addition, on May 16, 1994, in Selma, NC, an Amtrak train derailed after colliding with an intermodal trailer from a freight train on an adjacent track. This accident resulted in 1 fatality and 121 injuries. According to the NTSB accident report, three of the injured passengers reported difficulty exiting the passenger cars because they could not identify the emergency exit windows in the darkness. NTSB/RAR–95/02. When they were finally able to escape through the doors leading outside, they said that they were not sure how far they were above a surface, which may not have been solid ground, because they could not see below the steps of the car. The NTSB found that fixed emergency lighting systems were not operating inside several passenger cars because the batteries and the wiring connecting the batteries to the lights were damaged as a result of the derailment.

In the 1999 PESS final rule, FRA established performance criteria for emergency lighting, including minimum illumination levels in new passenger car door locations, aisles, and passageways, to help enable the occupants of the passenger cars to discern their immediate surroundings (be situationally aware) and thereby minimize or avoid panic in an emergency. Establishing an illumination requirement at floor level adjacent to doors was intended to permit passenger car occupants to see and negotiate thresholds and steps that are typically located near doors. The illumination requirement 25 inches above the floor for aisles and passageways was intended to permit passenger car occupants to see and make their way past obstacles as they exit a train in an emergency. FRA also required that the emergency lighting system remain operational on each car for 90 minutes.

With respect to existing equipment, FRA noted in the 1999 PESS final rule that it desired achievable emergency lighting enhancements and that it would evaluate an APTA emergency lighting standard when completed. Subsequently, the Task Force helped develop a revised APTA emergency lighting standard that would enhance the FRA emergency lighting requirements in § 238.115 by: (1) Applying the requirements to existing equipment; and (2) improving the back-up power supply survivability requirement (with application to both new and certain existing cars). The Task Force recommended revisions to the APTA emergency lighting standard to address older equipment not covered by the emergency lighting requirements contained in original § 238.115. The revised APTA standard specifies minimum emergency lighting performance criteria for all passenger cars (new and existing). The levels of illumination and duration required for equipment ordered before September 8, 2000, and placed in service before September 9, 2002, are half the levels that are required for newer equipment by the APTA standard. This takes into consideration the more limited capabilities of older electrical lighting systems. The APTA emergency lighting standard provides that these illumination and duration requirements be implemented by January 1, 2015, or when the equipment is transferred, leased, or conveyed to another railroad for more than 6 months of operation, whichever occurs first. Some railroads indicated their intention to retire certain equipment by 2015. The Task Force agreed it would not be cost-justified to retrofit such equipment. It should be noted that, although the APTA standard provides for compliance by January 1, 2015, FRA requires compliance by January 1, 2017, to allow those railroads not already in compliance sufficient time to comply with the requirements.

In addition, the APTA emergency lighting standard provides that emergency lighting systems installed on each passenger car ordered on or after April 7, 2008, or placed in service for the first time on or after January 1, 2012, meet minimum illumination levels by means of an independent power source that is located in or within one-half of a car length of each light fixture it powers, and that operates when normal power is unavailable. As previously noted, these illumination levels are the same as the ones originally specified in § 238.115 for doors, aisles, and passageways. The independent power source requirement was not originally contained in § 238.115, and is being incorporated into this final rule. The Task Force evaluated the feasibility of equipping emergency lighting fixtures with self-contained power sources, as a back-up power source, independent of the main car battery. After deliberation, the Task Force concluded that maintenance would be very costly due

to the high number of power sources. The Task Force examined other methods for addressing the issue of emergency lighting system reliability and assisted APTA in revising the APTA emergency lighting standard to better address those situations in which an emergency lighting system may be most beneficial. For example, in the event of a derailment resulting in a car rollover, the importance of situational awareness is heightened. Occupants are likely not in the same location as they were before the incident and, in conditions of darkness, are likely unaware as to where in the passenger car they are located in relation to the nearest exit. APTA added four requirements that address the NTSB's recommendation to FRA regarding emergency lighting survivability for new passenger cars, as described below.

First, the APTA emergency lighting standard was revised to require an independent power source within the car body located no more than one-half of a car length away from the fixture it powers. For most passenger car designs, this translates into a minimum of two batteries, one in each end of the car. In the Silver Spring accident, passenger cars incurred collision and derailment damage to under-floor battery boxes, causing the wet-cell batteries contained in those boxes to leak electrolyte. Because of the damage and leakage, the batteries failed to provide power to the emergency lighting on board the passenger cars. Placing the batteries within the car body will reduce the risk of damage to the batteries during a collision, and increase the likelihood that the batteries will be capable of providing power to the emergency lighting.

Second, each of these independent power sources is required to have an automatic, self-diagnostic module to perform a discharge test to ensure timely detection and notification of a malfunction.

Third, emergency lighting systems in new cars are required by the APTA standard to be capable of operating in all equipment orientations to address accident situations resulting in the rollover of a car. During an accident, passenger cars may tilt, causing wet-cell batteries contained in those cars to leak electrolyte and, as a consequence, fail to provide power to the emergency lighting on board the passenger cars. Wet-cell batteries will likely leak when tilted in a rollover, because wet-cell batteries have a gas vent on top, which allows liquid to escape when tipped over. Alternatively, a sealed battery is capable of functioning as intended, regardless of the battery's orientation. When a sealed battery is tilted during an accident, it will not fail to provide power to emergency lighting merely as a result of being tilted.

Finally, the APTA standard provides that emergency lighting systems must be designed so that at least 50 percent of the light fixtures operate, notwithstanding the failure of any single fixture or power source. Additionally, augmenting this requirement, FRA notes that the APTA emergency signage standard that FRA is incorporating by reference into this rule requires a minimum of 144 square-inches of HPPL material placed either on, or in the immediate vicinity of, side door exits that are intended to be used as emergency exits, to provide some illumination at the floor for passengers and crewmembers as they exit.

In support of revising the APTA emergency lighting standard, the Volpe Center researched various alternative, cost-effective technologies for addressing the reliability of emergency lighting systems. The Volpe Center found that the development of emergency lighting systems that can function reliably for a decade or more with minimal maintenance and that can withstand passenger train collision/derailment forces has been greatly facilitated by two technologies:

- Solid-state lighting (SSL)—most commonly known as light emitting diodes (LEDs); and
- Super capacitors—devices that store about 100 times as much electrical charge per unit volume as previous types of capacitors.

Solid-state lighting includes conventional LEDs and other light technologies to produce illumination without the use of legacy methods such as incandescent filaments or excited gases in glass containers. Compared with other lighting technologies, the SSL devices are much smaller, are able to withstand hundreds or thousands of times as much shock forces, and have much longer service lives. LED and other SSL devices use approximately only half as much energy to produce a given amount of light as the best fluorescent lamps. The light output of current white LEDs ranges from 25 to 90 lumens per watt, which means that a large area can be illuminated to a required minimum value (one lumen per square foot) with only one watt of power. Use of LEDs also makes it easier to shape the light output to concentrate it in areas such as an aisle or at door locations and permits meeting the illumination requirements with less power than would be needed if LEDs were omnidirectional (like incandescent or fluorescent lamps).

Capacitors are devices that store energy in an electrical field (as opposed to a battery, in which the energy is stored chemically). Chemicals that store and release energy in amounts that are useful in batteries are inherently corrosive, which limits battery life to about a thousand charge-discharge cycles, or about seven years in applications where the battery is rarely discharged. By avoiding use of corrosive chemicals, capacitors are far more durable. Super capacitors are rated for 500,000 charge-discharge cycles, and their service lives are expected to extend to at least ten years. Currently, commercial super capacitors are available that store as much as 5 watt-hours of energy. Combined with very efficient LEDs or other SSL devices, they allow the manufacture of emergency lighting systems using self-contained power with the ability to withstand collision forces of much greater magnitude than traditional emergency lighting systems currently in use. As discussed in sections VII.D through F, below, the brightness of newer photoluminescent materials that can be used for emergency egress signs and exit path marking can be a cost-effective means of addressing concerns regarding the survivability of emergency lighting systems, particularly for older equipment in operation, until retired from service.

*D. Marking and Instructions for Emergency Egress and Rescue Access*

To initially address emergency egress and rescue access, as well as other issues related to the 1996 Silver Spring, MD, accident cited earlier, FRA issued Emergency Order No. 20 (EO 20). 61 FR 6876. In addition to other requirements, EO 20 required commuter and intercity passenger railroads to mark the location, and provide instructions for the use, of emergency window exits by no later than April 20, 1996. In an effort to respond to this requirement as effectively as possible in the timeframe provided, affected railroads that had not done so began to install photoluminescent emergency exit markings to mark emergency window exits, as well as doors intended for emergency egress, using photoluminescent materials that were available at the time for this purpose.

On May 4, 1998, FRA issued the PTEP final rule that required door exits that are intended for emergency egress to be lighted or conspicuously marked with luminescent material, and that instructions for their use be provided. The rule also required that emergency

window exits be conspicuously marked with luminescent material, and that instructions for their use be provided as well. *See* 63 FR 24630. Similarly, the rule required that doors and windows intended for emergency access by emergency responders for extrication of passengers also be marked with retroreflective material and instructions for their use posted.

Notably, the 1998 PTEP rule did not specify criteria for minimum luminance levels, letter size, or sign color. Yet, FRA stated that the marking of the door and window exits must be conspicuous enough so that a reasonable person, even while enduring the stress and panic of an emergency evacuation, could determine where the closest and most accessible route out of the car is located. *See* 63 FR 24669. Many railroads installed signs made of zinc-sulfide, which were capable of providing luminance for only a period of less than 10 minutes in many cases. Subsequently, photoluminescent sign technology evolved, and other materials began to be used, such as strontium-aluminate, which is capable of providing high levels of luminance for much longer periods.

The original APTA emergency signage standard was revised in 1999 to require the installation of emergency exit signs with specific minimum ''higher performance'' photoluminescent material, in terms of brightness and duration, as well larger minimum letter sizes, color contrast, etc., for emergency exit signs. The second revision, authorized in 2002, included a reorganization of certain sections, citation of the American Society for Testing and Materials International (ASTM) retroreflectivity standards, as well as the revision of annex guidance to evaluate the performance characteristics of the emergency exit signs. FRA considered incorporating elements of the APTA standard into the PTES final rule in 2008 so that emergency exit signs and intercom markings in passenger cars would be required to be made of photoluminescent material with higher levels of brightness for longer duration. However, the Task Force recommended that certain requirements in the APTA emergency signage standard be revised to address technical issues with the performance characteristics of certain types of photoluminescent materials already installed in existing passenger rail cars, as well as other necessary clarifications concerning sign size, color, and contrast, etc., before the standard would be incorporated by reference by FRA. *See* 63 FR 6886.

Accordingly, APTA further revised its emergency signage standard to incorporate the Task Force recommendations. The recommendations were based on Volpe Center research findings and technological advances in photoluminescence (as discussed in Section VII.F, below). Substantively, the revised APTA emergency signage standard required that each passenger rail car have interior emergency signage to assist passengers and train crewmembers in more readily locating, reaching, and operating emergency exits in order to safely evacuate from the passenger rail car or train. The standard also required that each car have exterior signage to assist emergency responders in more readily locating and utilizing emergency access points during an emergency situation warranting immediate passenger rail car or train evacuation. To ensure visibility to passengers, signs used to mark the location of vestibule doors were required to meet the brightness and duration performance requirements for photoluminescent material, as specified in the APTA standard.

Although the APTA emergency signage standard does not address emergency communications system signage, the Task Force recommended applying certain criteria for photoluminescent marking specified in that standard to intercom systems, as further described in Section VII.G, below. The APTA standard also includes specifications for retroreflective marking and material, which are consistent with FRA requirements for rescue access point marking for doors, windows, and roof access location. In addition, the APTA standard is more detailed than the relevant FRA requirements that have previously been specified in this part, for example addressing minimum letter sizes for doors and emergency window exits and including specific criteria for color, color contrast, etc.

The revised APTA emergency signage standard requires periodic testing of certain system components and contains procedures to ensure compliance. APTA designed its emergency signage standard to offer flexibility in application, as well as to achieve the desired goal of facilitating passenger and crew egress from potentially life-threatening situations in passenger rail cars. Accordingly, an individual railroad would have the responsibility to design, install, and maintain an emergency signage system that is compatible with its internal safety policies for emergency evacuation, while complying with the performance criteria specified in this APTA standard.

The Task Force previously recommended that FRA adopt the specific retroreflective material criteria contained in the APTA emergency signage standard related to rescue access windows and doors intended for access by emergency responders. See § 238.114 of the 2008 PTES rule, which added requirements for the installation of a minimum number of rescue access windows in specified locations on all passenger cars. Thus, in that rule, FRA added a definition of ''retroreflective material'' that incorporates by reference criteria from ASTM's Standard D 4956–07 for Type 1 Sheeting, which is consistent with the APTA emergency signage standard. FRA also made other revisions related to rescue access marking, consistent with the other rescue access marking requirements specified in the APTA standard. *See* 73 FR 6389.

*E. Low-Location Emergency Exit Path Marking*

A review of past passenger rail accidents involving passenger and train crew emergency evacuation has indicated that, in certain cases, both passengers and emergency responders lacked sufficient information necessary for expedient emergency egress and responder access due to the absence of identifiable markings. A lack of adequate markings indicating the location of emergency exits, in conjunction with lighting system failures, or low levels of illumination, or both, during conditions of limited visibility when these accidents occurred caused confusion and contributed to casualties. In addition, the presence of fire or smoke may substantially increase the difficulty of evacuating passenger train occupants.

To avoid the many hazards associated with evacuation onto the right-of-way, the preferred means of egress from a passenger car that is not located at a station is via the end door(s) to the next car. Under conditions of limited visibility, or when illumination from emergency lighting fixtures located at or near the ceiling are obscured by smoke, such LLEEPM (including exit signs) must remain discernible. Particularly when smoke is present, the most viable escape path is the more visible escape path, which is likely to be at or near the floor, towards where occupants are forced to lower themselves (where the pathway markings are located) to avoid inhaling the smoke.

The 1999 APTA LLEEPM standard required HPPL material to be installed on all new passenger rail cars. Such

markings are intended to provide a visible pathway for passenger rail car occupants to locate and reach emergency exits under conditions of limited visibility, even if the emergency lighting system fails. The standard includes requirements for marking aisles, stairways, and passageways to indicate the path to the primary exit for both existing and new cars, using either HPPL material for marking, or lighting having an independent power source with a duration of at least 90 minutes. Certain revisions were made to the original LLEEPM standard, which consisted primarily of additional definitions, reorganization and revision of certain sections, and the addition of annexes used to evaluate the performance of HPPL material used for LLEEPM.

In December 2006, with the participation of the Task Force, the Volpe Center conducted a series of emergency egress simulations at the WMATA training facility, which demonstrated that egress from a passenger rail car can be very challenging. Initially, some photoluminescent emergency exit sign materials commonly found in passenger rail cars and some HPPL sign and LLEEPM materials were placed in a single-level passenger rail car that was darkened to demonstrate the difference in performance between the two types of materials. Next, the car was filled with theatrical smoke, which quickly rose and filled most of the car, obscuring photoluminescent signs, including HPPL markings, except for door exit location markings located near the floor and LLEEPM. Members of the Task Force participating in the simulation attempted to exit the car via an end door by moving along the aisle in a crouching position and using an HPPL LLEEPM system as guidance. The LLEEPM system was covered in one end (half) of the car to demonstrate the noticeable effectiveness of the LLEEPM system that remained visible in the other end (half) of the car, in terms of brightness and duration. Then, the darkened car was tilted to a 15-degree angle. This car orientation was used to demonstrate firsthand the potential difficulties associated with trying to maintain one's balance and walk through the car to a door exit.

The LLEEPM system complements the emergency signage system by identifying all primary door exits with HPPL and complements the emergency lighting system by providing a visible path to emergency exits that is not dependent on a power source outside of the passenger compartment, so that all primary emergency exits in a passenger car can be identified from every seat in the car. The Task Force initially reviewed the 2002 version of the APTA LLEEPM standard and recommended that certain revisions be made to address the same type of issues related to photoluminescent material as in the emergency signage standard, as well as recommended other technical revisions for consistency with the emergency signage standard, to enable FRA to incorporate the standard by reference.

*F. Photoluminescent Marking Materials*

As mentioned above, as a result of the NTSB's investigation of the February 1996 Silver Spring, MD, accident, the NTSB expressed concern that at least some of the passengers in the MARC train involved in the collision were unable to locate, reach, or operate doors and emergency window exits due to the failure of emergency lighting. Shortly after, FRA issued EO 20 requiring commuter and intercity passenger railroads to mark emergency window exits with luminescent material. *See* 61 FR 6876. The most conspicuous and visible markings related to emergency egress are either internally illuminated (illuminated by a self-contained source), or made of HPPL materials.

Since the issuance of EO 20, Volpe Center research has provided extensive information to FRA and the Task Force for different types of photoluminescent materials and their performance characteristics when installed in passenger rail cars. The brightness levels for many of the emergency exit signs and LLEEPM using zinc sulfide material, originally installed in response to EO 20, are low and the duration is short, and thus do not perform as well as newer HPPL materials using strontium aluminate, which are capable of a much higher initial brightness and longer duration time. In addition, Volpe Center research shows that placement of the photoluminescent sign and marking materials relative to sources of light is key to proper performance in terms of brightness and duration. Other factors that affect the ability of occupants to see and read signs and markings include the size of the letters and their distance from the sign or marking.

Separately, and in conjunction with industry representatives, the Volpe Center conducted tests in various in-service passenger cars of different design and age by measuring illumination and luminance levels, and demonstrated that some of the photoluminescent markings were not as bright as they were intended to be. Photoluminescent signs and LLEEPM materials certified to be capable of achieving certain brightness levels were found not to meet those criteria due to inadequate charging light levels. The presence of shadows cast by nearby structures and fixtures, the location of light fixtures relative to emergency exit signs and photoluminescent LLEEPM materials, the condition of light diffusers, and the type of lamps used to provide the charging light were all causes for why either the zinc sulfide or the HPPL products were unable to charge sufficiently and thus achieve expected brightness levels.

The Task Force considered the use of HPPL material to be an important improvement over the previous photoluminescent materials that were designed to less stringent criteria for duration and brightness, and also a cost-effective means of addressing concerns regarding the survivability of emergency lighting systems, particularly for older equipment in service. To develop a more effective photoluminescent standard that would address the Volpe Center findings, the Task Force developed HPPL material specifications with technical assistance from the Volpe Center, which APTA included in its 2007 revision of both the emergency signage standard and the LLEEPM standard. FRA notes that the Task Force revisions to the emergency signage and LLEEPM standards: (1) Allow flexibility for use of different types of charging light sources; (2) require that new HPPL signs meet the same luminance requirements with lower charging light levels; (3) allow alternative testing criteria using meters that do not measure off-axis illuminance accurately; (4) grandfather signs that are likely to perform as intended for 60 minutes; and (5) in small areas, allow for lower luminance levels and in some cases the use of larger signs to compensate for even lower light levels. APTA revised the two APTA standards which now establish more stringent minimum requirements for the HPPL material performance criteria to provide visual guidance for passengers and train crewmembers to locate, reach, and operate door exits and emergency window exits, especially during conditions of limited visibility when the emergency lighting system has failed (or when smoke conditions obscure overhead emergency lighting).

*G. Emergency Communications*

The NTSB accident investigation report for the February 9, 1996 collision near Secaucus, New Jersey, that involved two New Jersey Transit Rail Operations (NJTR) trains and resulted in three fatalities and numerous injuries, illustrates the importance of emergency communication systems to prevent

panic and further injuries. According to the NTSB report (NTSB/RAR–97/01, at p. 27):

> Although the train crews said that they went from car to car instructing passengers to remain seated, passengers said that they were not told about the severity of the situation and were concerned about a possible fire or being struck by an oncoming train. They therefore left the train and wandered around the tracks waiting for guidance, potentially posing a greater hazard because of the leaking fuel from train 1107.
>
> No crewmember used the public address system to communicate with passengers. By using the public address system, all passengers would have received the same message in less time than it would have taken the NJT employees to walk from car to car.

The NTSB report also stated:

> Information about the possibility of a fire or a collision with an oncoming train could have been provided to passengers over the public address system to address their concerns and prevent them from leaving the train. The Safety Board concludes that the lack of public announcements addressing the passengers' concerns caused them to act independently, evacuate the train, and wander along the tracks, thus potentially contributing to the dangerous conditions at the collision site.

To help address such concerns, FRA issued the PESS final rule in 1999, which established requirements for two-way emergency communication systems and markings for Tier II passenger equipment. *See* 64 FR 25641. PA systems allow the train crew to keep passengers informed in an emergency situation and provide instructions to them in a timely manner. The train crew can provide instructions to passengers to not take an action that could place them or other passengers in any greater danger, such as instructing the passengers, as appropriate, to remain on the train and not endanger themselves by unnecessarily evacuating the train on their own. Conversely, passengers could use the intercom feature of a two-way communication system to report security issues as well as other pertinent information to the train crew, such as injuries resulting from an accident, other forms of medical emergencies, or serious mechanical problems with the passenger rail car. The 2008 PTES final rule established emergency communication (PA and intercom) system requirements for Tier I passenger equipment and replaced the previous emergency communication system requirements in § 238.437 for Tier II passenger equipment. *See* 73 FR 6370, 6389.

When there is a disruption to the normal power supply to a car, having markings that remain conspicuous allow passengers to locate and use the intercom to communicate with the train crew. During the development of the PTES final rule, some railroad representatives on the Task Force noted that although instructions were posted at the intercom locations on their passenger cars, luminescent markings indicating the intercom location were not used. The Task Force therefore recommended that luminescent markings be required for that purpose.

It should be noted that FRA proposed to adopt a requirement for luminescent markings of intercom locations in the 2008 PTES final rule, and invited comment on whether the luminescent material should be HPPL material. *See* 71 FR 50293. As noted above, in the discussion concerning emergency window exit signage, the APTA emergency signage standard contains specific criteria for luminescent markings. The Task Force focused on revisions to this APTA standard in order to recommend whether to incorporate some or all of its contents into part 238 by reference and thereby require that luminescent markings for intercoms comply with the standard as it relates to luminescent markings. The APTA Passenger Rail Equipment Safety Standards (PRESS) Task Force had also indicated that they intended to revise then-APTA Standard SS–PS–001–98 (re-designated as PR–PS–S–001–98), ''Standard for Passenger Railroad Emergency Communications,'' to include more specific requirements for marking emergency communication systems.

The 2008 PTES final rule required luminescent marking of each intercom location to ensure that the intercom can be easily identified for use in the event that both normal and emergency lighting are not functioning. The posted operating instructions, however, are not required to be luminescent as some Task Force members indicated that the instructions may be easier to read when not luminescent.

As noted previously, the Task Force discussed at length issues associated with the development of HPPL material component requirements. Due to the APTA revision of the performance criteria for HPPL material, the Task Force recommended that emergency communication system markings comply with the performance criteria for brightness and duration of HPPL material in the emergency signage standard. Accordingly, FRA believes that applying the luminescent marking requirements in the revised APTA emergency signage standard to intercom systems will further address the emergency communication concerns raised in the NTSB report.

*H. Debriefing and Critique Session Following Emergency Situations and Full-Scale Simulations*

As an illustration of the importance of train crew participation in a debrief and critique session, FRA notes that on May 25, 2006, a power outage disrupted all rail traffic on Amtrak's Northeast Corridor between Washington and New York during the morning rush hour, stranding approximately 112 trains with tens of thousands of passengers on board. Part 239 has required that train crewmembers participate in a debriefing and critique session of such incidents. However, the managers of the train crew of at least one train participated in the debriefing and critique session for that train, rather than the train crew.

The Task Force recognized the importance of the participation in the debriefing and critique session of train crewmembers and other employees who actually have first-hand knowledge of the emergency that occurred. Accordingly, the Task Force reviewed the debriefing and critique requirements in § 239.105 and recommended that clarifications be made to ensure that, to the extent practicable, all onboard crewmembers, control center personnel, and any other employees actually involved in emergency situations and full-scale simulations, be included in the debriefing and critique sessions. In addition, flexibility was recommended to be provided to railroads by permitting participation in the required debriefing and critique sessions of the employees either by appearing in person or by the use of alternative methods. As such, FRA clarifies § 239.105 to reflect this necessary participation.

## V. Section-by-Section Analysis

This section-by-section analysis explains the provisions included in the rule. A number of the issues and provisions involving this rule have been discussed and addressed in detail in the preamble, above. Accordingly, these preamble discussions should be considered in conjunction with those below and will be referenced as appropriate. Notably, as indicated above, there has been a change in the final rule text from the NPRM in relation to emergency lighting based on comments received from Metra.

*A. Amendments to Part 238, Subparts B, C, and E*

Section 238.5 Definitions

In this section, FRA is introducing a set of new definitions into the

regulation, as well as revising certain existing definitions. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the rule, in an attempt to minimize the potential for misinterpretation of the rule.

''APTA'' means the American Public Transportation Association, the present name of APTA.

''End-frame door'' means an end-facing door normally located between or adjacent to the collision posts or similar end-frame structural elements. This term refers to exterior doors only. This term is added for use in the definition of a vestibule door to make clear that an end-frame door is not a vestibule door.

''Vestibule'' means an area of a passenger car that normally does not contain seating, is adjacent to a side door, and is used for passing from a seating area to a side exit door. Passageways located away from side door exits are not considered vestibules.

''Vestibule door'' means a door separating a seating area from a vestibule. End-frame doors and doors separating sleeping compartments or similar private compartments from a passageway are not vestibule doors. This term is referenced in § 238.112(f) as one type of door that is required to have removable panels or windows for emergency egress use in new passenger cars. Please note that § 238.112 also applies to other interior doors intended for passage through a passenger car, and not only vestibule doors.

Section 238.112 Door Emergency Egress and Rescue Access Systems

FRA revised this new section heading from the NPRM to make clear that the requirements of this section concern systems for door use during an emergency. FRA notes that this clarification will be particularly helpful in light of FRA's intent to propose enhancements to the requirements for passenger train exterior side door safety systems in the near future.

This section consolidates certain existing door requirements that apply to both Tier I and Tier II passenger cars, adds new requirements related to removable panels or windows in vestibule and other interior doors, and clarifies that an exterior side door is required ''in each side'' of a passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. These door requirements were formerly located in §§ 238.235 for Tier I equipment and 238.439 for Tier II equipment. Section 239.107 also contained interior and exterior marking and instruction requirements, respectively, for all doors intended for emergency egress and all doors intended for emergency access by emergency responders. All door emergency egress and rescue access system requirements that apply both to Tier I and Tier II passenger cars have been moved to this new § 238.112. Notably, the new vestibule door requirements enhance passenger safety by requiring an additional means of access to the vestibule area from the passenger seating area, and vice versa.

Paragraphs (a) through (c) contain the requirements formerly located in paragraphs § 238.235(a) through (c), respectively. Paragraph (a), moved from former 238.235(a) and concerning manual override devices, is being modified slightly to remove the December 31, 1999 compliance date. Having this date written in the rule is no longer necessary, as the scope of subpart B in which this section is located does not limit application of its requirements to equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, unless otherwise specified, as subpart C does. See § 238.201(a). A manual override device allows a passenger during an emergency to open or unlock a passenger car door that has been closed or locked by the railroad for operational purposes. Without the manual override device, a key or other tool or implement is typically needed to open or unlock the door. By making the door easier to unlock, the manual override device expedites passenger egress during an emergency.

A minor modification to paragraph (b) makes clear that of the minimum two exterior side doors required in each passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, one must be located in each side of the car. Moreover, paragraph (b) makes clear that a set of dual-leafed (or bi-parting) exterior doors is considered a single door for purposes of this paragraph.

Paragraphs (d) and (e) contain requirements for interior and exterior door exit markings and instructions, respectively, which were formerly contained in §§ 238.235(d) and 239.107(a). Both paragraphs reference the requirements for marking and instructions for emergency egress and rescue access in new § 238.125.

Paragraph (f) requires a removable panel or removable window in each vestibule door, as well as in any other interior door intended for passage through a passenger car. A vestibule door, or other interior passageway door or the door pocket, may become deformed or otherwise inoperable during an emergency. The additional means of egress would be used in the event that the door cannot be opened, or it becomes difficult to retain the door in an open position, as in the case of a vestibule door to allow for passage from the seating area to the exterior doors in the vestibule. The latter circumstance is of particular concern when a passenger car is on its side where the pocket for the door would now be located above the door, making it difficult to keep the door in the open position. In the case of other interior doors intended for passage through a passenger car (see discussion above related to the definition of vestibule door in the section-by-section analysis of § 238.5), the removable panel or removable window facilitates passage through the car to the vestibule to exit the car from a side door exit or through the car to exit the car into an adjoining car, or both.

Specifically, in addition to the requirements for removable panels or removable windows, paragraph (f)(1) requires a manual override device for a vestibule door or other interior passageway door if it is powered, so that occupants can open the door in the event power is lost and the door or its pocket is not deformed. Moving through the open door is, of course, the preferred means of passage; a removable panel or window is provided in the door as an alternative means of passage, should the manual override device not be able to open the door. As further described, below, paragraph (f)(2) contains requirements for the ease of operability, dimensions, and location of the removable panels or windows in doors. In addition, distinct requirements in paragraph (f)(3) apply to bi-parting doors; because such individual door panels or leaves are very narrow, they cannot reasonably contain removable panels or windows that would allow occupants to pass through.

To allow sufficient time for railroads and manufacturers of passenger cars to implement these requirements without costly modifications to existing car orders, the requirements in this paragraph apply to equipment ordered on or after January 28, 2014, or placed in service for the first time on or after January 29, 2018. Railroad representatives on the Task Force indicated that such a 4-year time period is consistent with the time between the placement of an order and delivery of the ordered equipment.

This section makes clear that doors providing access to a control compartment are exempt from the requirement for removable panels or

windows. The doors to such compartments are usually locked, particularly in newer cars that have door lock override mechanisms, to prevent unauthorized access to the control compartment. Railroads may, at their discretion, include removable panels or other additional means of egress in these doors, but they are not required to do so.

Paragraph (f)(2)(i) requires that each removable panel or removable window be designed to permit rapid and easy removal from both sides of the door without the use of a tool or other implement. For example, in the case of a vestibule door, rapid and easy removal is required from the vestibule side and the seating area side of the door. Access from both sides of the door is consistent with the preferred means of car evacuation, which is to the next car and not onto the right-of-way. The designs for removable windows or panels in the doors would likely be very similar to the removable gasket design and other designs generally used for dual-function windows, which serve both as emergency window exits and rescue access windows and therefore can be opened and removed from inside or outside of the car. This requirement in paragraph (f)(2)(i) is intended to be consistent with the ease of operability requirement currently applicable to emergency window exits in § 238.113, which dual-function windows must meet. For example, the design presented by Kawasaki for a removable panel in a vestibule door, described in the 2008 PTES final rule, would satisfy the requirements for ease of operability. *See* 73 FR 6370.

Paragraph (f)(2)(ii) requires that removal of the panel or window in the door create an unobstructed opening with minimum dimensions of 21 inches horizontally by 28 inches vertically. The Task Force consulted with passenger car and door manufacturers to ensure that the dimensions could be met without sacrificing the basic structural design and integrity properties of vestibule doors, including firmness, balance, and stability. Manufacturers agreed that the maximum width that could be reasonably achieved is 21 inches. The 28-inch vertical dimension allows for the door to have a vertically-centered horizontal structural member, as well as retain a window in the upper half, which is common to many existing door designs and a feature that railroads are interested in retaining.

Paragraph (f)(2)(iii) requires that the removable panel or removable window in the door be located so that the lowest point of the opening is no higher than 18 inches from the floor. This requirement provides ease of use for passing through after removal of the panel or window. The opening should be located close to the floor so that car occupants can crawl through without undue difficulty or undue delay.

Paragraph (f)(3) contains distinct requirements for bi-parting doors. Each powered, bi-parting vestibule door and any other interior, powered bi-parting door intended for passage through a passenger car must be equipped with a manual override device and a mechanism to retain each door leaf in the open position. Examples of a retention mechanism include a ratchet and pawl system, which allows movement in one direction but locks it in the other, and a sprag. The retention mechanism is intended to expedite egress by holding the door panels in place once they are opened. The override mechanism provides a means to operate the doors in the event that power is lost. It must be located adjacent to the door leaf it controls and be designed and maintained so that a person can readily access and operate it from each side of the door without the use of any tool or other implement. Access from both sides of the door is consistent with the preferred means of car evacuation, which is to the next car, and not onto the right-of-way.

Paragraph (f)(4) specifically contains requirements relating to the capabilities of manual override devices for vestibule doors and other interior doors intended for passage through a passenger car, including such doors that are bi-parting. See the discussion relating to manual override devices in paragraph (a).

Paragraph (f)(5)(i) contains requirements for marking and operating instructions for removable panels and windows in vestibule and other interior passageway doors. Paragraph (f)(5)(ii) contains particular requirements for marking and providing operating instructions for door override devices and retention mechanisms in vestibule and other interior passageway doors that are bi-parting.

To ensure that each removable panel or removable window in a door can be identified in conditions of limited visibility, the panel or window must be conspicuously and legibly marked with HPPL material on both sides of the vestibule or other interior passageway door in which it is installed, in accordance with section 5.4.2 of the APTA emergency signage standard that FRA is incorporating by reference in § 238.125. Use of such material is consistent with requirements for emergency window exit and door exit signage. Legible and understandable operating instructions for each removable panel or removable window must also be provided on each side of the door. For example, in the case of a vestibule door, these instructions need to be provided on both the vestibule side and the seating area side of the door. Marking and instruction requirements also apply to bi-parting door manual override devices and retention mechanisms.

Paragraph (f)(6) contains requirements for testing a representative sample of door removable panels and windows, manual override devices, and door retention mechanisms to determine that they operate as intended. In particular, FRA believes that it is important to inspect, maintain, and repair manual vestibule and other interior passageway door override devices and door retention mechanisms to ensure that they function properly in the event of an emergency. FRA believes that testing of a representative sample of manual override devices and door retention mechanisms no less frequently than once every 184 days to verify that they are operating properly is reasonable and appropriate for safety. This frequency is consistent with existing requirements contained in § 238.113 for the testing of emergency window exits. However, because emergency window exits are subject to different service conditions than removable panels and removable windows located in vestibule doors and other interior passageway doors, including bi-parting doors, separate tests are needed. Following each test, defective systems must be repaired as appropriate in accordance with the requirements of this part.

Section 238.113 Emergency Window Exits

Requirements in parts 223 and 239 for the marking of emergency exits, as well as in part 238 for the marking of emergency communications transmission points, have specified the use of luminescent materials. (Door exits intended for emergency egress may also be lighted, in accordance with § 239.107(a)(1).) Part 238 defines ''luminescent material'' as material that absorbs light energy when ambient levels of light are high and emits this stored energy when ambient levels of light are low, making the material appear to glow in the dark. *See* § 238.5. However, § 238.113 has not specified minimum requirements for the initial levels of brightness of the markings (i.e., luminance levels) or how long the markings must maintain the same or reduced levels of brightness.

Accordingly, paragraph (d) of this section is amended to require markings, as well as instructions, for emergency

window exits to comply with the APTA emergency signage standard that FRA is incorporating by reference in § 238.125. The inspection requirement related to marking of emergency window exits formerly contained in § 239.107(b) is also added as paragraph (e) of this section. By helping to ensure that the markings appear conspicuous and legible, FRA believes that these changes enhance the capability and benefit of the markings in guiding passenger train occupants to locate and operate emergency window exits.

Specifically, as further discussed below, in § 238.125 FRA is incorporating by reference APTA Standard PR–PS–S–002–98 (previously SS–PS–002–98), Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment.'' The APTA standard establishes specific criteria for luminescent material, including how bright the material must be and for how long. The APTA standard also contains specific design requirements to facilitate recognition and reliability, including letter size and color contrast requirements as well as requirements for door locator signs to facilitate identification of door locations that may not be easily seen by seated passengers.

As noted above, FRA is moving the emergency window exit testing requirements formerly contained in § 239.107(b) to a new paragraph (e) in this section. Generally, emergency window exits are intended to supplement door exits, which are normally the preferred means of egress in an emergency situation. Emergency windows provide an alternative means of emergency egress should doors intended for egress be rendered inoperable or inaccessible. Emergency windows also provide an additional means of egress in life-threatening situations requiring very rapid exit, such as an on-board fire or submergence of the car in a body of water. The requirement to periodically test a representative sample of emergency window exits arose from EO 20 and is being carried forward from § 239.107 into this new paragraph.

Section 238.114 Rescue Access Windows

This section includes requirements for the location and retroreflective marking of rescue access windows. Paragraph (d) of this section continues to require that retroreflective material be used to mark rescue access windows. However, as further discussed below, in § 238.125 FRA is incorporating by reference APTA Standard PR–PS–S–002–98 (previously SS–PS–002–98), Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment.'' FRA believes that adopting the APTA standard enhances the effectiveness of the retroreflectivity requirements in identifying rescue access locations for emergency responders, taking into consideration the environment in which passenger trains operate. This section was originally prompted in part by the April 23, 2002 collision involving a Metrolink passenger train near Placentia, CA, and the ensuing NTSB Safety Recommendation (R–03–21) to FRA, which illustrated the potential importance of having rescue access windows on each level of a passenger car. The general intent of the provision is to provide a means for emergency responders to quickly identify and effectively operate rescue access windows in order to gain access directly into every passenger compartment on every level of a passenger car, in the event that a stairway or interior door is compromised and any exterior doors are blocked.

The same APTA emergency signage standard discussed previously related to emergency window exit marking contains detailed criteria for marking rescue access windows, including the use of certain retroreflective material. FRA notes that, consistent with this standard, in the 2008 PTES final rule it added the definition of ''retroreflective material'' for marking doors, windows, and roof locations intended for rescue access. See § 238.5; 73 FR 6370, 6380. As used in this rule, ''retroreflective material'' means a material that is capable of reflecting light rays back to the light source and that conforms to the specifications for Type I Sheeting, as specified in ASTM International's (ASTM) Standard D 4956–07, ''Standard Specification for Retroreflective Sheeting for Traffic Control.'' ASTM International defines Type I Sheeting as ''medium-intensity retroreflective sheeting referred to as 'engineering grade' and typically enclosed lens glass-bead sheeting,'' and FRA has previously incorporated the ASTM definition by reference. FRA is now incorporating by reference the APTA emergency signage standard, and notes that the standard also requires that the retroreflective material be tested according to ASTM's Standard E 810–03, ''Standard Test Method for Coefficient of Retroreflective Sheeting Utilizing the Coplanar Geometry.'' Further, the APTA standard provides that, in order to maintain the optimum retroreflective properties of the base material, any retroreflective markings that have ink or pigment applied shall utilize a translucent or semi-translucent ink, as per the manufacturer's instructions. In addition, a clear coat that protects against ultra-violet light may be added to prevent fading. Finally, retroreflectivity requirements shall be met if protective coatings or other materials for the enhancement of sign durability are used. Please see section 6 of the APTA emergency signage standard for design requirements addressing rescue access information for emergency responders.

Section 238.115 Emergency Lighting

This section formerly contained requirements for emergency lighting in passenger cars only ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. These requirements continue to apply to this equipment. Yet, to enhance the performance of emergency lighting in passenger cars, FRA is amending this section to expand its application to all passenger cars, both new and existing, and is also modifying the emergency lighting requirements. Specifically, this section now incorporates by reference APTA Standard PR–E–S–013–99 (previously SS–E–013–99), Rev. 1, ''Standard for Emergency Lighting Design for Passenger Cars.'' All passenger cars must comply with this standard by January 1, 2017, or an alternative standard providing at least an equivalent level of safety if approved by FRA pursuant to § 238.21. Moreover, in advance of the January 1, 2017 compliance deadline, this section requires that by December 31, 2015, each railroad must ensure that 70% of its passenger cars comply. Incorporating and phasing-in this APTA emergency lighting standard for all passenger cars not only enhances the standards for new passenger cars but also establishes standards for passenger cars both ordered before September 8, 2000, and placed in service before September 9, 2002, i.e., passenger cars not previously subject to this section.

This section continues to require minimum emergency illumination levels at doors, aisles, and passageways. In addition to these locations, the APTA emergency lighting standard requires minimum levels of emergency illumination for stairways, crew areas of multiple-unit (MU) locomotives and cab cars, toilets, and other areas.

This section has required a ''back-up power system'' capable of operating in all equipment orientations within 45 degrees of vertical, as well as after the initial shock of certain collision or derailment scenarios. The car's main battery has also been considered an acceptable ''back-up power system.'' However, a traditional main battery is

limited in its ability to provide power in equipment orientations greater than 45 degrees of vertical. Additionally, because it is common for such batteries to be at least partially located below the car body, it would not be unusual for the main car battery to be damaged in the event of a derailment, which would render the emergency lighting system inoperable, as occurred in the MARC train cab car that was involved in the 1996 accident in Silver Spring, MD. Accordingly, for equipment ordered on or after April 7, 2008, or first placed in service on or after January 1, 2012, the APTA emergency lighting standard requires an independent power source to be located within the car body and placed no more than a half-car length away from the fixture it powers in the event the main car battery is not able to power the system. This system must also be capable of operating in all equipment orientations. The APTA emergency lighting standard contains additional design and performance criteria for batteries that are used as independent power sources. It also contains rigorous requirements for periodic testing of batteries used as independent power sources.

FRA notes that § 238.307 requires railroads to perform periodic mechanical inspections of passenger equipment, including passenger cars. Specifically, that section requires the inspection of interior and exterior mechanical components not less frequently than every 184 days. As part of this inspection, railroads have been required to verify that all emergency lighting systems are in place and operational as specified in this § 238.115. The APTA emergency lighting standard contains more detailed periodic inspection and maintenance requirements, including the conduct of periodic tests to confirm the minimum illumination levels and duration no less frequently than every eight years on a representative sample of cars or areas. However, if the first two cars or areas tested exceed the minimum illumination levels by a factor of 4 or greater, no further testing is required of that particular representative sample until the next required periodic test eight years later, according to the APTA emergency lighting standard. Importantly, the APTA standard also requires railroads to replace each sealed battery that is used as an independent power source for an emergency light circuit at two-year intervals, unless the lighting circuit can be manually turned off or is equipped with controllers that automatically prevent unnecessary battery discharge, or other measures are taken to prevent routine discharge (e.g., maintaining equipment on wayside power or head-end power). If so equipped, the APTA standard requires that the battery-replacement interval be according to the manufacturer's specifications, or if not specified, at least every five years. For emergency lighting systems that use capacitors as independent power sources, a functional test of the devices shall be conducted as part of the periodic inspection. Due to their long life, the two-year replacement requirement does not apply to capacitor-based energy storage devices. However, a functional test of the devices shall be conducted as part of the periodic inspection. The APTA standard also requires initial verification tests on at least one representative car or area of a car for each emergency lighting system layout to ensure compliance with the minimum duration and illumination levels.

FRA has reviewed the APTA emergency lighting standard it is incorporating by reference and has determined that the standard contains the proper specifications for emergency lighting in passenger cars. FRA believes that compliance with the APTA standard requirements identified in this section will help ensure effective operation of emergency lighting in new passenger cars. Establishment of requirements for older, existing equipment will help ensure emergency lighting systems are capable of providing sufficient illumination for occupants to retain situational awareness in the event normal lighting is not available, particularly in the event of an emergency situation. FRA expects that almost all affected railroads are already in compliance with the APTA standard requirements. Some railroads, including railroads that are not members of APTA, are not currently in compliance with the APTA standard requirements. To allow railroads that are not currently in compliance with the APTA standard requirements enough time to comply with the requirements, FRA is phasing in the requirements of this section, as discussed above.

Section 238.121 Emergency Communications

This section contains requirements for PA and intercom systems so that passengers and train crewmembers may communicate with each other in an emergency.

FRA is clarifying the requirements in paragraph (a)(2) of this section, which applies to new Tier I and all Tier II passenger cars. FRA is inserting the word ''after'' directly before the date ''April 1, 2010.'' The previous omission of the word ''after'' in this paragraph was a typographical error, which was evident from the discussion of this provision in the 2008 PTES final rule. *See* 73 FR 6389. Insertion of ''after'' in the rule text makes clear that the requirements of this paragraph (a)(2) apply to each Tier I passenger car ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010—not only on April 1, 2010, as well as to all Tier II passenger cars. This clarification does not result in substantive change to the requirements contained in this section.

In addition, FRA is amending paragraph (b)(2) of this section, which contains requirements for marking the location of each intercom intended for passenger use and providing operating instructions. Specifically, prior to January 28, 2016, this paragraph continues to require that the location of each intercom intended for passenger use be clearly marked with luminescent material and that legible and understandable operating instructions be posted at or near each such intercom to facilitate passenger use. Paragraph (b)(2)(i). A new provision, paragraph (b)(2)(ii), now provides that on or after January 28, 2016, each intercom intended for passenger use shall be marked in accordance with section 5.4.2 of the APTA emergency signage standard. Notably, the APTA standard for emergency signage incorporated into this rule includes specific requirements for the use of luminescent marking materials, thereby enhancing the former requirements in this paragraph for luminescent material at intercom locations. Legible and understandable operating instructions shall also continue to be posted at or near each such intercom to facilitate passenger use.

FRA believes that the compliance dates in paragraph (b)(2) are consistent with the Task Force's intent to allow for sufficient implementation time to transition to the newer requirements. Accordingly, photoluminescent markings that were installed in accordance with the 2008 PTES final rule continue to remain in compliance for the first two years following the effective date of this rule, as provided in paragraph (b)(2)(i). The requirements in paragraph (b)(2)(ii) then become applicable to both Tier I and Tier II passenger equipment two years from the effective date of this final rule.

Paragraph (c) of this section continues to require that PA and intercom systems on all new Tier I passenger rail cars, as explained below, and all Tier II passenger cars have back-up power for

a minimum period of 90 minutes. An example of a back-up power source is the main battery in a passenger car. The only change FRA is making clarifies the applicability of this paragraph, which was originally added by the 2008 PTES final rule without any express applicability dates. The back-up power requirements have the same applicability dates as those for intercom systems in the PTES final rule. That is, paragraph (c) applies to each Tier I passenger rail car ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and to all Tier II passenger cars. While FRA believes that the application of paragraph (c) is understood from a reading of this section as a whole, adding these dates removes any confusion that may arise.

Section 238.123 Emergency Roof Access

This section contains emergency roof access requirements for Tier I and Tier II passenger cars ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011. Requirements for Tier II power cars and existing Tier II passenger cars are found in § 238.441.

Paragraph (e) of this section contains specific requirements for marking, and providing instructions for, emergency roof access locations. This rule amends paragraph (e) to reference the APTA emergency signage standard in new § 238.125 for marking emergency roof access locations and providing instructions for their use. Paragraph (e) of this section formerly required that each emergency roof access location be conspicuously marked with retroreflective material as defined in § 238.5 and be of contrasting color, and that legible and understandable instructions be provided near each emergency roof access location. Section 6 of the APTA emergency signage standard contains design requirements for rescue access information for emergency responders, and section 6.1.3 of the standard specifically addresses emergency roof access locations. The APTA standard is more comprehensive than the former requirements in paragraph (e) of this section.

The use of retroreflective material is intended to enable emergency responders to quickly identify emergency roof access locations by shining a light directly onto the car roof, and the instructions are intended to promote the proper use of the emergency roof access feature by emergency responders. To maximize the potential use of the required retroreflective material, this paragraph (e) now references the requirements of § 238.125, which incorporates by reference APTA's emergency signage standard for retroreflective material. Please see the discussion in § 238.114 of retroreflective material requirements in the APTA emergency signage standard. Overall, FRA believes that compliance with the APTA emergency signage standard will help ensure that the retroreflective material markings for emergency roof access are conspicuous and that the instructions are legible, thereby facilitating emergency responder access to passenger cars.

Section 238.125 Markings and Instructions for Emergency Egress and Rescue Access

To enhance the requirements for markings and instructions for passenger car emergency egress and rescue access, FRA is adding a new section that incorporates by reference APTA Standard PR–PS–S–002–98 (previously SS–PS–002–98), Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' October 2007. This new section also permits use of an alternative standard providing at least an equivalent level of safety if approved by FRA pursuant to § 238.21. FRA notes that it intends the term ''markings'' to encompass the term ''emergency signage,'' as an emergency sign is a type of marking.

Generally, the APTA emergency signage standard provides that each passenger rail car have interior emergency signage to assist passengers and train crewmembers in locating and operating emergency exits in order to safely evacuate as necessary from the rail car or train during an emergency situation. The APTA standard also addresses exterior emergency signage to assist emergency responders in locating and operating features and systems to access the rail equipment.

FRA and passenger railroads recognize that, in the majority of emergency situations, the safest place for passengers and crewmembers is typically on the train. Should evacuation from a particular car be required, the safest course of action for passengers and crew is normally to move into an adjacent car. Staying on the train avoids or minimizes the hazards inherent in evacuating passengers onto the railroad right-of-way. The APTA emergency signage standard was designed to achieve the desired goal of facilitating passenger and crew egress from potentially life-threatening situations in passenger rail cars, as well as offer flexibility in application.

Individual railroads have the responsibility to design, install, and maintain an emergency signage system that is compatible with their internal safety policies for emergency evacuation and rescue access, while complying with the performance criteria specified in the APTA emergency signage standard. The APTA standard is intended to increase the overall effectiveness of the emergency signage by specifying requirements related to signage that include: recognition, design, location, size, color and contrast, and materials. Incorporation of the more detailed APTA standard's requirements helps ensure that emergency exits are more easily identified and operated by passengers and train crewmembers to evacuate a passenger car during an emergency and also that rescue access systems are more easily identified and used by emergency responders.

As noted above, § 238.307 requires railroads to perform periodic mechanical inspections of passenger equipment, including passenger cars. The periodic mechanical inspection requires the inspection of interior and exterior mechanical components not less frequently than every 184 days. As part of this inspection, railroads have been required to verify that all safety-related signage is in place and legible. *See* §§ 238.305(c)(7) and 238.307(c)(12). The APTA emergency signage standard specifies more detailed periodic inspection and maintenance related to emergency egress and rescue access signage. Notably, as with the APTA LLEEPM standard, discussed below, the APTA emergency signage standard provides that railroads verify that all emergency signage system components function as intended. In particular, section 10.2.1.2 of the APTA emergency signage standard addresses photoluminescent (including HPPL) systems in passenger rail cars and provides that passenger railroads:

- Conduct tests and inspections in conformance with APTA standard PR–IM–S–005–98 (previously SS–I&M–005–98), Rev. 2, ''Standard for Passenger Compartment Periodic Inspection and Maintenance,'' September 2003, a copy of which has been placed in the public docket for this rulemaking;
- Conduct periodic tests and inspections to verify that all emergency signage system components, including power sources, function as intended; and
- Conduct periodic illuminance tests to confirm that photoluminescent components receive adequate charging light no less frequently than once every 8 years, with the first test conducted no

later than 8 years after a car has been placed in service for the first time, for only the following components:

1. HPPL signs/markings placed in areas designed or maintained with normal light levels of less than 5 foot candles; and

1. Grandfathered PL materials, where the sign/marking is placed in an area designed or maintained with normal light levels of less than 10 foot candles.

If all of the illuminance levels in the first two randomly-selected representative sample cars/areas exceed the minimum required to charge the photoluminescent components set forth in this standard by at least a factor of 2, no further testing is required for the cars/areas represented by the sample car/area tested for the periodic inspection cycle.

FRA has reviewed the APTA emergency signage standard it is incorporating by reference and has determined that the standard contains appropriate specifications for emergency signage and markings for egress and access so that passenger car occupants may identify and operate emergency exits and emergency responders may identify and use rescue access features. FRA believes that compliance with the APTA standard identified in this section ensures effective use of signage and markings for emergency egress and rescue access.

FRA expects that almost all affected railroads are already in compliance with the APTA emergency signage standard, while some railroads, including railroads that are not members of APTA, are not currently in compliance. To allow railroads that are not currently in compliance with the APTA standard sufficient time to get into compliance, this section is not applicable until one year from the effective date of this final rule. Consequently, to ensure continued application of FRA's existing signage and marking requirements until this section is applicable, in each separate section in which this section is referenced applicability dates have been inserted that conform with the applicability date for this section. FRA's existing signage and marking requirements continue to apply in this interim period.

Section 238.127 Low-Location Emergency Exit Path Marking

To facilitate passenger car evacuation, particularly under conditions of limited visibility, FRA is adding this new section that incorporates by reference APTA's LLEEPM standard: PR–PS–S–004–99 (previously SS–PS–004–99), Rev. 2, ''Standard for Low-Location Exit Path Marking,'' October 2007. This section also permits the use of an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21.

Generally, the APTA LLEEPM standard was developed to establish minimum requirements for LLEEPM in both existing and new passenger cars to provide visual guidance for passengers and train crewmembers to identify, reach, and operate primary exits during conditions of limited visibility when the emergency lighting system has failed or when smoke conditions obscure overhead emergency lighting. The APTA standard requires that each passenger rail car have an LLEEPM system, visible in the area from the floor to a horizontal plane 4 feet (1.22 m) above the aisle of the rail car, to provide directional guidance to passengers to exit an affected car to the adjacent car (or, at the option of the railroad, exit off the train). The LLEEPM system, by virtue of its location in or near the rail car floor, is intended to assist passengers and train crewmembers in identifying the path to exit a rail car in an emergency under conditions of darkness and especially smoke.

The requirement for an LLEEPM system is also intended to complement the emergency signage that has been required by FRA regulation and thereby increase the overall effectiveness of such signage systems to enable passengers and train crewmembers to locate, reach, and operate emergency exits under a greater range of emergency situations, particularly life-threatening circumstances involving smoke. Much like the APTA emergency signage standard, the APTA LLEEPM standard specifies requirements related to the selection of the physical characteristics, informational content, and placement of LLEEPM systems for installation within passenger rail cars to provide consistent identification of both primary and, under certain conditions, secondary exits, as well as the path(s) to follow to reach such exits.

As noted above, § 238.307 requires railroads to perform periodic mechanical inspections of passenger equipment, including passenger cars. The periodic mechanical inspection requires the inspection of interior and exterior mechanical components not less frequently than every 184 days. As part of this inspection, railroads have been required to verify that all vestibule steps are illuminated. *See* § 238.305(c)(9). The APTA LLEEPM standard specifies additional periodic inspection and maintenance related to LLEEPM signage and markings. Notably, section 9.2 of the APTA LLEEPM standard requires railroads to conduct periodic inspections and tests to verify that all LLEEPM system components, including power sources, function as intended. See section 9.2. Like the APTA emergency signage standard, the LLEEPM standard also requires railroads to test a representative sample of passenger rail cars or areas using a statistically-valid, documented sampling method.

FRA has reviewed the APTA LLEEPM standard it is incorporating in this rule and has determined that the standard contains appropriate specifications for LLEEPM systems. FRA believes that compliance with the APTA standard identified in this section helps ensure that passenger car occupants are able to identify, reach, and operate primary egress points during an emergency.

FRA expects that almost all affected railroads are already in compliance with the APTA LLEEPM standard, while some railroads, including railroads that are not members of APTA, are not currently in compliance. To allow railroads that are not currently in compliance with the APTA standard sufficient time to get into compliance, this section is not applicable until one year from the effective date of this final rule.

Section 238.235 Doors

FRA has removed § 238.235 and moved the requirements of this section to new § 238.112, for user convenience and to consolidate the requirements of this part for conciseness. Section 238.235 principally contained requirements for exterior side doors in passenger cars and features capable of opening the doors to exit or access the cars in an emergency situation. The safety requirements are unchanged. Section 238.112 consolidates all door emergency egress and rescue access system requirements into one section from §§ 238.235, 238.439, and 239.107 that apply, as specified, to all passenger cars. Because all of the requirements in § 238.235 have been moved to new § 238.112, no requirements remain in § 238.235, and it is reserved for future use.

Section 238.303 Exterior Calendar Day Mechanical Inspection of Passenger Equipment

This section contains the requirements related to the performance of exterior mechanical inspections of each passenger car (i.e., passenger coach, MU locomotive, and cab car) and each unpowered vehicle used in a passenger train each calendar day that the equipment is placed in service. FRA is revising paragraph (e)(18) of this section only to update the cross

reference to the marking requirements for door emergency egress and rescue access systems from former § 239.107(a) to new § 238.112. The final rule consolidates door emergency egress and rescue access system requirements into new § 238.112, as discussed above. As part of this consolidation, requirements to mark these systems have been moved from former § 239.107(a) to new § 238.112, which in turn references new § 238.125, discussed above. Paragraph (e)(18) has been updated accordingly as a conforming change; no other change is intended.

Section 238.305 Interior Calendar Day Mechanical Inspection of Passenger Cars

This section contains the requirements related to the performance of interior mechanical inspections of passenger cars each calendar day that the cars are placed in service. FRA is clarifying paragraph (a) of this section; adding new paragraphs (c)(11) and (13) to address the inspection of LLEEPM systems, as well as the inspection of removable panels and windows in vestibule doors and certain other interior passageway doors; and amending paragraph (d) to reference new paragraph (c)(11).

Paragraph (a) sets forth the general requirement for passenger car interior calendar day mechanical inspections and formerly referenced paragraph (d) of this section as providing an exception to the general requirement for long-distance intercity passenger trains that have been delayed en route. This cross-reference to paragraph (d) was in error and was caused by a previous re-designation of the original paragraph (d) that should have been updated in paragraph (a). *See* 65 FR 41308. As previously re-designated, paragraph (e) of this section contains the exception. Accordingly, FRA is correcting the reference in paragraph (a) from paragraph (d) to paragraph (e).

Paragraph (c) of this section identifies the various components that require visual inspection as part of the interior calendar day mechanical inspection. Inspection, testing, and maintenance of emergency systems helps ensure that these systems are either available for use in the event of an emergency, or that the train crew is aware that they are not available. In turn, this information helps provide for more effective and safe resolution of emergency situations.

FRA is adding two new paragraphs to paragraph (c). First, paragraph (c)(11) is added to require the daily inspection of LLEEPM systems to ensure that they are in place and conspicuous. LLEEPM systems are required in new § 238.127. Nonetheless, FRA has amended paragraph (d) of this section to allow flexibility for safely operating a passenger car in service with a noncompliant LLEEPM system found during the car's interior calendar day mechanical inspection until the next required daily inspection, so as not to unduly disrupt normal passenger operations.

Paragraph (c)(13) is also added to ensure that removable panels and windows in vestibule doors and other interior doors used for passage through a passenger car are properly in place and secured, based on a visual inspection performed during the interior calendar day mechanical inspection. Paragraph (c)(13) affords special flexibility for handling noncompliant equipment, provided that the railroad has developed and follows written procedures for mitigating the hazard(s) caused by the noncomplying condition and the train crew is given written notification of the defect. Thus, a passenger car with an inoperative or nonfunctioning removable panel or removable window in a vestibule door or other interior passageway door is permitted to remain in passenger service after the noncompliant condition is discovered until no later than the car's fourth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, or for a passenger car used in long-distance intercity train service, until the eighth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first. At that time, the removable panel or removable window in the door must be repaired, or the car must be removed from service.

Section 238.307 Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains

This section contains the requirements related to the performance of periodic mechanical inspections of all passenger cars and all unpowered vehicles used in a passenger train. Paragraph (c) of this section specifically identifies interior and exterior mechanical components that are required to be inspected not less frequently than every 184 days. FRA is modifying paragraph (c)(4) of this section to add requirements for inspecting and testing a representative sample of door removable panels and windows, manual override devices, and retention mechanisms, in accordance with § 238.112. (Please note that existing paragraph (d)(1) of this section contains a separate requirement to inspect manual door releases not less frequently than every 368 days, to determine that all manual door releases operate as intended.) FRA is also relocating the requirement for inspecting and repairing emergency window exits from § 239.107 to this paragraph. In this regard, FRA continues to require that records of emergency window exit inspection, testing, and maintenance be retained for two calendar years after the end of the calendar year to which they relate, as formerly required by § 239.107(c). In particular, FRA is concerned that sufficient records be kept of periodic emergency window exit testing, which FRA is moving from § 239.107(b) to § 238.113(e). Further, FRA is modifying paragraph (c)(5) of this section to add requirements for the inspection, testing, and maintenance of LLEEPM systems, as required by § 238.127, to ensure that they are operational.

The inspection, testing, and maintenance of emergency systems help to ensure that these systems are available for use in the event of an emergency. This allows for more effective and safe resolutions of emergency situations.

Section 238.311 Single Car Test

In the NPRM, FRA had proposed to amend this section to update the name of APTA, ''American Public Transportation Association,'' and its address, 1666 K Street NW., Washington, DC 20006. However, FRA has decided not to amend this section at this time. FRA's changes would have been mere technical corrections. Moreover, this section does not address passenger train emergency systems, which are the focus of this rulemaking, but rather the testing of passenger brake equipment. Any revision to this section will be addressed in a separate rulemaking proceeding.

Section 238.439 Doors

This section has contained the requirements for door safety systems for Tier II passenger cars. As noted, FRA is consolidating the requirements of this section applicable to both Tier I and Tier II passenger cars, together with those in its former Tier I counterpart (former § 238.235), and restating them in a single, new section: § 238.112. The requirements that are unique to Tier II passenger equipment remain in this section.

Specifically, FRA is removing former paragraphs (a), (b), (e), and (g) of this section, which are now addressed by the requirements of new § 238.112. The remaining paragraphs, former paragraphs (c), (d), and (f) of this

section, are re-designated as paragraphs (a) through (c), respectively. Former paragraphs (c) and (d) have no counterpart in the Tier I equipment requirements and remain in this section. Former paragraph (f), re-designated as paragraph (c), is revised to limit its applicability effectively to existing Tier II passenger cars.

Paragraph (a) of this section, formerly paragraph (c), now requires the status of powered, exterior side doors to be displayed to the crew in the operating cab and, if door interlocks are used, the sensors to detect train motion must nominally be set to operate at not more than 3 mph. Paragraph (b) of this section, formerly paragraph (d), requires that powered, exterior side doors be connected to an emergency back-up power system. Both paragraphs are otherwise unchanged.

Paragraph (c) of this section, formerly paragraph (f), requires passenger compartment end doors to be equipped with a kick-out panel, pop-out window, or other similar means of egress in the event the doors will not open, or be so designed as to pose a negligible probability of becoming inoperable in the event of car body distortion following a collision or derailment. This paragraph does not apply to such doors providing access to the exterior of a trainset, however, as in the case of an end door in the last car of a train. As revised, this paragraph's applicability is limited to Tier II passenger cars both ordered prior to the effective of this final rule and placed in service within four years after the effective date of this final rule. To date, no kick-out panel, pop-out window, or other similar means of emergency egress has been placed in a Tier II passenger car, on the basis that the end compartment doors, as designed, pose a negligible probability of failure due to car body distortion following a collision or derailment. All new Tier II passenger cars are now subject to the more comprehensive requirement in new § 238.112 related to equipping vestibule doors and other interior doors intended for passage through a passenger car with a removable panel or removable window.

Section 238.441 Emergency Roof Access

This section contains emergency roof access requirements for Tier II passenger cars and Tier II power cars. Please see the 2008 PTES final rule for a full discussion of the requirements of this section. 73 FR 6395–6396.

Specifically, paragraph (a) of this section contains requirements for marking, and providing instructions for, emergency roof access locations in Tier II passenger cars and Tier II power cars ordered prior to April 1, 2009, and placed in service prior to April 1, 2011. This rule amends paragraph (a) to reference the APTA emergency signage standard in new § 238.125 for marking emergency roof access locations and providing instructions for their use. Please see § 238.125 for a discussion of the APTA emergency signage standard relating to the marking of emergency roof access locations. Each emergency roof access location continues to be required to be conspicuously marked with retroreflective material of contrasting color, and legible and understandable instructions must continue to be provided near the emergency roof access location. To enhance the potential use of the required retroreflective material, this paragraph now references the requirements of § 238.125, which incorporates by reference APTA's emergency signage standard for retroreflective material. FRA believes that compliance with the APTA standard identified in § 238.125 will ensure that retroreflective material markings for emergency roof access are conspicuous and that the instructions are legible, thereby facilitating emergency responder access to passenger cars.

Paragraphs (b) and (c) of this section apply, respectively, to Tier II passenger cars and Tier II power cars ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011. Paragraph (b) references the requirements in § 238.123 in full, and paragraph (c) references the marking and instruction requirements in § 238.123. Accordingly, the marking and instruction requirements in § 238.125 apply to the Tier II passenger equipment covered by paragraphs (b) and (c) of this section, by the reference to § 238.125 that is now provided in § 238.123.

Appendix A to Part 238—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties for use in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited comment on the penalty schedule; however, no comments were received.

Accordingly, FRA is amending the penalty schedule to reflect the addition of the following sections to this part 238: § 238.112, Door emergency egress and rescue access systems; § 238.125, Marking and instructions for emergency egress and rescue access; and § 238.127, Low-location emergency exit path marking. FRA is also removing and reserving the entry for § 238.235, whose requirements have been integrated into § 238.112.

*B. Amendments to Part 239, Subpart B*

Section 239.105 Debriefing and Critique

FRA is clarifying the debriefing and critique requirements in this section by expressly requiring train crew participation in debriefing and critique sessions. This section has required a debriefing and critique session after each passenger train emergency situation or full-scale simulation to evaluate the effectiveness of the railroad's emergency preparedness plan. The railroad is then required to improve or amend its plan, or both, as appropriate, in accordance with the information developed. Employees directly involved in the emergency situation or full-scale simulation have valuable first-hand knowledge of the event. Participation by these employees in the debriefing and critique session is necessary to evaluate the effectiveness of the emergency preparedness plan, and FRA is clarifying this requirement to reflect this necessary participation.

The rule now specifies that, to the extent practicable, all on-board personnel, control center personnel, and any other employees involved in the emergency situation or full-scale simulation shall participate in the debriefing and critique session. The rule also makes clear the flexibility that exists for employees to participate in these sessions by one or more of the following means: in person; offsite via teleconference; or in writing, by a statement responding to questions provided prior to the session, and by responding to any follow-up questions. FRA believes that these clarifications will help to ensure that the debriefing and critique sessions provide meaningful information for railroads to use in furthering their emergency preparedness planning efforts.

Section 239.107 Emergency Exits

FRA is removing § 239.107 and moving the requirements formerly contained in this section into §§ 238.112 and 238.307. Requirements formerly contained in § 239.107 related to doors have been moved to § 238.112. Requirements formerly contained in § 239.107 and related to windows have been moved to § 238.307. FRA believes that the consolidation of these requirements makes the regulation more user-friendly, which helps facilitate compliance with its requirements. FRA

has not made substantive changes to the requirements formerly contained in this section in moving them to these other sections. Of course, FRA notes that it has amended the requirements for emergency exits as discussed in this rule.

Appendix A to Part 239—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties for use in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited comment on the penalty schedule; however, no comments were received.

Accordingly, FRA has revised the schedule of civil penalties in issuing this rule to reflect revisions made to this part 239. Specifically, FRA is removing and reserving the entry for § 239.107, whose requirements have been integrated into new § 238.112 and into § 238.307.

## VI. Regulatory Impact and Notices

### *A. Executive Orders 12866 and 13563, and DOT Regulatory Policies and Procedures*

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a Regulatory Evaluation addressing the economic impact of this final rule. As part of the Regulatory Evaluation, FRA has assessed quantitative estimates of the cost streams expected to result from the implementation of this rule. For the 20-year period analyzed, the estimated quantified costs imposed on industry total $22.7 million with a present value (PV, 7 percent) of $13.1 million. In particular, FRA considered the industry costs associated with complying with the three APTA passenger train emergency systems standards incorporated by reference in this rule, installation of removable panels or windows in single-panel vestibule doors of new passenger cars, requirements for bi-parting vestibule doors, and inspection, testing, and maintenance of the emergency systems.

In analyzing the final rule, FRA has applied updated ''Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses,'' March 2013. This policy updates the Value of a Statistical Life (VSL) from $6.2 million to $9.1 million and revises guidance used to compute benefits based on injury and fatality avoidance in each year of the analysis based on forecasts from the Congressional Budget Office of a 1.07 percent annual growth rate in median real wages over the next 30 years (2013–2043). FRA also adjusted wage-based labor costs in each year of the analysis accordingly. Real wages represent the purchasing power of nominal wages. Non-wage inputs are not impacted. The cost and benefit drivers for this analysis are labor costs and avoided casualties, both of which in turn depend on wage rates.

FRA believes that $13.1 million is the best estimate of regulatory cost. For more details on the costing of this rule, please see the Regulatory Evaluation found in the docket. The requirements that are expected to impose the largest burdens relate to emergency lighting, door/removable panels or windows (or bi-parting doors), and emergency egress and rescue access marking and instructions. The table below presents the estimated costs associated with the rule.

20-YEAR COST FOR FINAL RULE

| | |
|---|---|
| Door Removable Panels or Windows, and Bi-Parting Doors | $4,564,599 |
| Emergency Lighting | 1,845,309 |
| Emergency Egress and Rescue Access Marking and Instructions | 4,845,853 |
| Low-Location Emergency Exit Path Markings | 1,378,352 |
| Debriefing and Critique | N/A |
| Inspection, Testing, and Recordkeeping (APTA Standards) | 44,750 |
| Total | 13,074,863 |

Future costs are discounted to present value using a 7 percent discount rate.

As part of the Regulatory Evaluation, FRA has explained what the likely benefits for this final rule are, and provided a break-even analysis. This rulemaking is expected to improve railroad safety by promoting the safe resolution of emergency situations involving passenger trains, including the evacuation of passengers and crewmembers in the event of an emergency. The primary benefits include a heightened safety environment in egress from a passenger train and rescue access by emergency response personnel after an accident or other emergency. This corresponds to a reduction of casualties resulting from collisions, derailments, and other emergency situations. FRA believes the value of the anticipated safety benefits justify the cost of implementing the rule.

### *B. Regulatory Flexibility Act and Executive Order 13272*

To ensure potential impacts of rules on small entities are properly considered, FRA has developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must prepare a regulatory flexibility analysis (RFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This final rule requires each commuter and intercity passenger railroad to comply with three APTA standards, as well as requirements for installation of removable panels or windows in single-panel vestibule doors and other interior passageway doors of new passenger cars, bi-parting vestibule doors, and inspection, testing, and maintenance of these emergency systems. The APTA standards are: PR–E–S–013–99 (previously SS–E–013–99), Rev. 1, Standard for Emergency Lighting System Design for Passenger Cars; PR–PS–S–004–99 (previously SS–PS–004–99), Rev. 2, Standard for Low-Location Exit Path Marking (LLEPM); and PR–PS–S–002–98 (previously SS–PS–002–98), and Rev. 3. Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment. Many railroads have already implemented these APTA standards in advance of this rulemaking.

The ''universe'' of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. This final rule directly affects intercity passenger railroads and commuter railroads. It indirectly impacts manufacturers of passenger cars, marking related to emergency egress and rescue access, and low-location emergency exit path marking.

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition

of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is ''for profit'' may be and still be classified as a ''small entity'' is 1,500 employees for ''Line Haul Operating Railroads'' and 500 employees for ''Switching and Terminal Establishments.'' Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR, part 209. The $20 million-limit is based on the Surface Transportation Board's (STB), revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

FRA developed the requirements contained in this final rule in consultation with an RSAC Working Group and task force that included representatives from Amtrak, individual commuter railroads, individual passenger car manufacturers, sign manufacturers and suppliers, and APTA, which represents the interests of commuter railroads and passenger car manufacturers in regulatory matters.

The level of costs incurred by each organization should generally vary in proportion to the size of their passenger car fleet. For instance, railroads with fewer passenger cars have lower overall costs associated with implementing these standards. In the United States, there are currently 2 intercity passenger railroads, and 28 commuter railroad operations. The two intercity passenger railroads, Amtrak and the Alaska Railroad, are not considered to be small entities as Amtrak is a Class I railroad and the Alaska Railroad is a Class II railroad. Additionally, the Alaska Railroad is owned by the State of Alaska, which has a population in excess of 50,000.

Most commuter railroads are part of larger transportation organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. However, two commuter railroads do not fall in this category and are considered small entities. The impact on these two small railroads is discussed in the following section.

The first small entity impacted by this regulation is a commuter train operation that provides express service to and from a sporting event approximately seven times per year. A Class III railroad owns and operates the 6 bi-level passenger cars used for this commuter operation. The impact on this entity may include upgrades related to achieving compliance with the 2007 APTA standards for emergency lighting, emergency signage, and low-location exit path markings. The costs associated with completing these upgrades for the railroad are estimated to range between $14,482 and $28,694, depending on the existing level of compliance and could be spread over 2 to 3 years. Since this railroad provides service under contract to a State institution, it may be able to pass some or all of the compliance cost on to that institution. FRA published this analysis in the Initial Regulatory Flexibility Analysis (IRFA) that accompanied the NPRM and requested comments on the Analysis but did not receive any on this estimate. Thus, the small entity itself is not significantly impacted.

The second small entity impacted by this regulation is a commuter railroad that is owned by a Class III railroad. Out of its entire fleet of 9 cars, FRA estimates that 4 cars may need emergency lighting upgrades to comply with the new emergency lighting requirement. The costs associated with the upgrades of these 4 cars are estimated to be $18,758, which could be spread over 2 to 3 years. FRA also published this estimate in the IRFA that accompanied the NPRM and requested comments on the Analysis but did not receive any on this estimate.

The final rule requires railroads to test a representative sample of passenger railcars in accordance with the APTA LLEPM standard, using the procedures in Annex F or another statistically-valid, documented sampling method. The estimated cost of inspection/recordkeeping is $1,500 per car over the 20-year period analyzed. This cost was included in the total cost for each of the small entities above. This regulation only requires that a small percentage of each fleet be tested. Due to the size of the fleet of each of these small entities, it is estimated that only one car per fleet will need to be tested. The recordkeeping burden on the railroad industry is estimated to be 5 additional minutes per new car introduced to the fleet. FRA assumed that a ''Maintenance of Equipment & Stores'' [2] employee would prepare the records. Neither of these railroads is operating newly-built cars. They both operate cars purchased from other passenger railroads.

FRA believes that the two small entities directly impacted will not be affected significantly. One of the entities should be able to pass these costs on to a public entity. The other entity will likely only need to upgrade the emergency lighting in four cars, and FRA does not believe that will have a significant financial impact on their operations.

During the public comment period following publication of the NPRM, FRA did not receive any comments discussing the IRFA or Executive Order 13272. FRA certifies that the final rule will not have any significant economic impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by the final rule, none of these two entities will be significantly impacted.

*C. Paperwork Reduction Act*

The information collection requirements in this final rule are being submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain both new and current information collection requirements, and the estimated time to fulfill each requirement, are summarized in the following table:

[2] STB Data Statement No. B–300 for Year 2012 indicates that ''Maintenance of Equipment & Stores'' personnel earn, on average, a ''straight time rate'' of $27.20 per hour.

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| 238.112—Door emergency egress and rescue access systems (New requirements): | | | | |
| —Conspicuously marking/posting instructions on emergency egress doors. | 30 railroads | 45,804 markings/instructions. | 15 minutes | 11,451 hours. |
| —Marking/posting instructions on emergency responder access doors. | 30 railroads | 30,536 markings | 15 minutes | 7,634 hours. |
| —Marking/posting instructions on removable panels/windows in car vestibule and other interior passageway doors. | 30 railroads | 1,340 panel markings. | 15 minutes | 335 hours. |
| —Periodic testing: representative sample—removable panels/windows/etc. | 30 railroads | 17 tested cars | 90 minutes | 26 hours. |
| 238.113—Emergency window exits: | | | | |
| —Markings (Current requirement) | 30 railroads | 662 markings | 60 minutes, 90 minutes. | 964 hours. |
| —Periodic testing: representative sample of emergency window exits on passenger cars (Current requirement). | 30 railroads | 17 tested cars | 120 minutes, 30 minutes. | 9 hours. |
| 238.114—Rescue access windows: | | | | |
| —Markings/instructions on each access window (Current requirement). | 30 railroads | 1,092 markings | 45 minutes | 819 hours. |
| 238.121—Emergency communications: intercom system: | | | | |
| —Posting legible/understandable operating instructions at/near each intercom (Current requirement). | 30 railroads | 116 marked intercoms. | 5 minutes | 10 hours. |
| 238.123—Emergency roof access: | | | | |
| —Marking/instructions of each emergency roof access location (Current requirement). | 30 railroads | 232 marked locations. | 30 minutes | 116 hours. |
| 238.303—Exterior calendar day mechanical inspection of passenger equipment: | | | | |
| —Replacement markings of rescue access related exterior markings, signs, instructions (Current requirement). | 30 railroads | 150 markings | 20 minutes | 50 hours. |
| 238.303—Records of non-complying conditions (Current requirement). | 30 railroads | 150 records | 2 minutes | 5 hours. |
| 238.305—(Current requirements) Interior calendar day inspection of passenger cars: | | | | |
| —Non-complying end/side doors—written notification to crew of condition + notice on door. | 30 railroads | 260 written notifications + 260 notices. | 1 minute | 9 hours. |
| —Non-complying public address/intercom systems: written notification to crews. | 30 railroads | 300 notifications written. | 1 minute | 5 hours. |
| —Records of public address/intercom system non-complying conditions. | 30 railroads | 300 records | 2 minutes | 10 hours. |
| *New requirements:* | | | | |
| —Written procedure for mitigating hazards of non-complying conditions relating to removable panels/windows in vestibule and other interior passageway doors. | 30 railroads | 30 written procedures. | 40 hours | 1,200 hours. |
| —Written notification to train crew of non-complying condition relating to panels/windows in vestibule and other interior passageway doors. | 30 railroads | 458 notices | 2 minutes | 15 hours. |
| 238.307—Periodic mechanical inspection of passenger cars: | | | | |
| —Records of the inspection, testing, and maintenance of emergency window exits (Current requirement). | 30 railroads | 7,634 car inspections/records. | 5 minutes | 636 hours. |
| —Emergency roof markings and instructions—replacements (Current requirement). | 30 railroads | 32 markings | 20 minutes | 11 hours. |
| 238.311—Single car test: | | | | |
| —Copies of APTA Standard SS–M–005–98 to railroad head training person (Current requirement). | 30 railroads | 30 copies | 15 minutes | 8 hours. |
| —Copies to other railroad personnel | 30 railroads | 360 copies | 2 minutes | 12 hours. |

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Federal Railroad Administration, at 202–493–6292 *(Robert.Brogan@dot.gov),* or Ms. Kimberly Toone, Records Management Officer, Federal Railroad Administration, at 202–493–6132 *(Kimberly.Toone@dot.gov).*

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment

to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

*D. Federalism Implications*

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial effect on the States or their political subdivisions; it does not impose any substantial direct compliance costs; and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Nevertheless, State and local officials were involved in developing this rule. The RSAC, which recommended the proposals addressed in this rule, has as permanent members two organizations directly representing State and local interests, AASHTO and ASRSM.

However, this rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and re-codified at 49 U.S.C 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22–34, repealed and re-codified at 49 U.S.C. 20701–20703. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to section 20106. Moreover, the former LIA has been interpreted by the Supreme Court as preempting the field concerning locomotive safety. See Napier v. Atlantic Coast Line R.R., 272 U.S. 605 (1926) and Kurns v. Railroad Friction Products Corp., 132 S. Ct. 1261 (2012).

*E. Environmental Impact*

FRA has evaluated this regulation in accordance with its Procedures for Considering Environmental Impacts (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547; May 26, 1999. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation are excluded.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

*F. Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

*G. Trade Impact*

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 et seq.) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered to be unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this rulemaking on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act. The requirements are safety standards, which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the extent practicable, to state the requirements in terms of the

performance desired, rather than in more narrow terms restricted to a particular system design, so as not to limit different, compliant designs by any manufacturer—foreign or domestic.

*H. Privacy Act*

Anyone is able to search the electronic form of any comment or petition received into any of FRA's dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). Please see the privacy notice at *http://www.regulations.gov/#!privacyNotice.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

**List of Subjects**

*49 CFR Part 238*

Incorporation by reference, Passenger equipment, Railroad safety, Reporting and recordkeeping requirements.

*49 CFR Part 239*

Passenger equipment, Railroad safety.

**The Rule**

For the reasons discussed in the preamble, FRA amends parts 238 and 239 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

## PART 238—[AMENDED]

■ 1. The authority citation for part 238 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Section 238.5 is amended by adding in alphabetical order definitions of ''End-frame door'' and ''Vestibule door,'' and by revising the definitions of ''APTA'' and ''Vestibule'' to read as follows:

**§ 238.5 Definitions.**

* * * * *

*APTA* means the American Public Transportation Association.

* * * * *

*End-frame door* means an end-facing door normally located between, or adjacent to, the collision posts or similar end-frame structural elements.

* * * * *

*Vestibule* means an area of a passenger car that normally does not contain seating, is located adjacent to a side exit door, and is used in passing from a seating area to a side exit door.

*Vestibule door* means a door separating a seating area from a vestibule. End-frame doors and doors separating sleeping compartments or similar private compartments from a passageway are not vestibule doors.

* * * * *

■ 3. Section 238.112 is added to read as follows:

**§ 238.112 Door emergency egress and rescue access systems.**

Except as provided in § 238.439—

(a) Each powered, exterior side door in a vestibule that is partitioned from the passenger compartment of a passenger car shall have a manual override device that is:

(1) Capable of releasing the door to permit it to be opened without power from inside the car;

(2) Located adjacent to the door which it controls; and

(3) Designed and maintained so that a person may readily access and operate the override device from inside the car without requiring the use of a tool or other implement. If the door is dual-leafed, only one of the door leaves is required to respond to the manual override device.

(b) Each Tier I passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, and all Tier II passenger cars shall have a minimum of two exterior side doors, one in each side of the car. Each such door shall provide a minimum clear opening with dimensions of 30 inches horizontally by 74 inches vertically. A set of dual-leafed doors is considered a single door for purposes of this paragraph. Each powered, exterior side door on each such passenger car shall have a manual override device that is:

(1) Capable of releasing the door to permit it to be opened without power from both inside and outside the car;

(2) Located adjacent to the door which it controls; and

(3) Designed and maintained so that a person may access the override device from both inside and outside the car without requiring the use of a tool or other implement.

**Note to paragraph (b):** The Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles also contain requirements for doorway clearance (*See* 49 CFR Part 38).

(c) A manual override device used to open a powered, exterior door may be protected with a cover or a screen capable of removal without requiring the use of a tool or other implement.

(d)(1) Prior to January 28, 2015, all door exits intended for emergency egress shall either be lighted or conspicuously and legibly marked with luminescent material on the inside of each car, and legible and understandable instructions shall be provided for their use at or near each such door.

(2) On or after January 28, 2015, all door exits intended for emergency egress shall be marked, and instructions provided for their use, as specified in § 238.125.

(e)(1) Prior to January 28, 2015, all doors intended for access by emergency responders shall be marked on the exterior of the car with retroreflective material, and legible and understandable instructions shall be posted at or near each such door.

(2) On or after January 28, 2015, all doors intended for access by emergency responders shall be marked, and instructions provided for their use, as specified in § 238.125.

(f) Vestibule doors and other interior doors intended for passage through a passenger car. The requirements of paragraphs (f)(1) through (6) of this section apply only to passenger cars ordered on or after January 28, 2014, or placed in service for the first time on or after January 29, 2018.

(1) *General.* Except for a door providing access to a control compartment and a bi-parting door, which is subject to the requirements in paragraph (f)(3) of this section, each vestibule door and any other interior door intended for passage through a passenger car shall be equipped with a removable panel or removable window in the event the door will not open in an emergency, or the car is on its side and the door is difficult to open. If the door is powered, it shall have a manual override device that conforms with the requirements of paragraphs (f)(4) through (6) of this section.

(2) *Removable panels and windows*—

(i) *Ease of operability.* Each removable panel or removable window shall be designed to permit rapid and easy removal from each side of the door during an emergency situation without requiring the use of a tool or other implement.

(ii) *Dimensions.* Removal of the panel or window shall create an unobstructed opening in the door with minimum dimensions of 21 inches horizontally by 28 inches vertically.

(iii) *Location.* Each removable panel or removable window shall be located so that the lowest point of the opening created by removing the panel or window is no higher than 18 inches above the floor.

(3) *Bi-parting doors.* Each powered, bi-parting vestibule door and any other interior, powered bi-parting door intended for passage through a

passenger car shall be equipped with a manual override device and mechanism to retain each door leaf in the open position (*e.g.,* ratchet and pawl, or sprag). Each manual override device shall conform with the requirements of paragraphs (f)(4), (f)(5)(ii), and (f)(6) of this section.

(4) *Manual override devices.* Each manual override device shall be:

(i) Capable of releasing the door or door leaf, if the door is bi-parting, to permit it to be opened without power;

(ii) Located adjacent to the door or door leaf, if the door is bi-parting, it controls; and

(iii) Designed and maintained so that a person may readily access and operate the override device from each side of the door without the use of a tool or other implement.

(5) *Marking and instructions.* (i) Each removable panel or removable window in a vestibule door or other interior door intended for passage through a passenger car shall be conspicuously and legibly marked with luminescent material on each side of the door as specified in section 5.4.2 of APTA PR–PS–S–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' Authorized October 7, 2007, or an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21. Legible and understandable operating instructions shall be posted on each side of the door at each such panel or window. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of the incorporated document from the American Public Transportation Association, 1666 K Street NW., Washington, DC 20006, *www.aptastandards.com.* You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) For bi-parting doors, each manual override device and each retention mechanism shall be conspicuously and legibly marked with luminescent material. Legible and understandable operating instructions for each manual override device and each retention mechanism shall be posted at or near each such device or mechanism.

(6) *Testing.* At an interval not to exceed 184 days, as part of the periodic mechanical inspection, each railroad shall test a representative sample of the door removable panels, removable windows, manual override devices, and retention mechanisms on its cars, as applicable, to determine that they operate as intended. The sampling method must conform with a formalized statistical test method.

■ 4. Section 238.113 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

**§ 238.113 Emergency window exits.**

* * * * *

(d) *Marking and instructions.* (1) Prior to January 28, 2015, each emergency window exit shall be conspicuously and legibly marked with luminescent material on the inside of each car to facilitate egress. Legible and understandable operating instructions, including instructions for removing the window, shall be posted at or near each such window exit.

(2) On or after January 28, 2015, each emergency window exit shall be marked, and instructions provided for its use, as specified in § 238.125.

(3) If window removal may be hindered by the presence of a seatback, headrest, luggage rack, or other fixture, the instructions shall state the method for allowing rapid and easy removal of the window, taking into account the fixture(s), and this portion of the instructions may be in written or pictorial format. This paragraph (d)(3) applies to each emergency window exit subject to paragraph (d)(1) or (2) of this section.

(e) *Periodic testing.* At an interval not to exceed 184 days, as part of the periodic mechanical inspection, each railroad shall test a representative sample of emergency window exits on its cars to determine that they operate as intended. The sampling method must conform with a formalized statistical test method.

■ 5. Section 238.114 is amended by revising paragraph (d) to read as follows:

**§ 238.114 Rescue access windows.**

* * * * *

(d) *Marking and instructions.* (1) Prior to January 28, 2015, each rescue access window shall be marked with retroreflective material on the exterior of each car. A unique and easily recognizable symbol, sign, or other conspicuous marking shall also be used to identify each such window. Legible and understandable window-access instructions, including instructions for removing the window, shall be posted at or near each rescue access window.

(2) On or after January 28, 2015, each rescue access window shall be marked, and instructions provided for its use, as specified in § 238.125.

■ 6. Section 238.115 is revised to read as follows:

**§ 238.115 Emergency lighting.**

(a) Prior to January 1, 2017, the requirements specified in paragraphs (a)(1) through (4) of this section apply to each passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. Emergency lighting shall be provided in each passenger car and shall include the following:

(1) A minimum, average illumination level of 1 foot-candle measured at floor level adjacent to each exterior door and each interior door providing access to an exterior door (such as a door opening into a vestibule);

(2) A minimum, average illumination level of 1 foot-candle measured 25 inches above floor level along the center of each aisle and passageway;

(3) A minimum illumination level of 0.1 foot-candle measured 25 inches above floor level at any point along the center of each aisle and passageway; and

(4) A back-up power system capable of:

(i) Operating in all equipment orientations within 45 degrees of vertical;

(ii) Operating after the initial shock of a collision or derailment resulting in the following individually applied accelerations:

(A) Longitudinal: 8g;

(B) Lateral: 4g; and

(C) Vertical: 4g; and

(iii) Operating all emergency lighting for a period of at least 90 minutes without a loss of more than 40% of the minimum illumination levels specified in this paragraph (a).

(b)(1) As further specified in paragraph (b)(2) of this section, on or after January 1, 2017, emergency lighting shall be provided in each passenger car in accordance with the minimum requirements specified in APTA PR–E–S–013–99, Rev. 1, ''Standard for Emergency Lighting System Design for Passenger Cars,'' Authorized October 7, 2007, or an alternative standard providing at least an equivalent level of safety if approved by FRA pursuant to § 238.21. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain a copy of the incorporated document from the American Public Transportation Association, 1666 K Street NW., Washington, DC 20006, *www.aptastandards.com.* You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) No later than December 31, 2015, at least 70 percent of each railroad's passenger cars that were ordered prior to September 8, 2000, and placed in service prior to September 9, 2002, shall be in compliance with the emergency lighting requirements provided in paragraph (b)(1) of this section.

■ 7. Section 238.121 is amended by revising the first sentence of paragraph (a)(2), paragraph (b)(2), and paragraph (c) introductory text to read as follows:

**§ 238.121 Emergency communications.**

* * * * *

(a) * * *

(2) *New Tier I and all Tier II passenger cars.* Each Tier I passenger car ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and all Tier II passenger cars shall be equipped with a PA system that provides a means for a train crewmember to communicate by voice to passengers of his or her train in an emergency situation. * * *

(b) * * *

(2) *Marking and instructions.* The following requirements apply to each passenger car:

(i) Prior to January 28, 2016, the location of each intercom intended for passenger use shall be conspicuously marked with luminescent material and legible and understandable operating instructions shall be posted at or near each such intercom.

(ii) On or after January 28, 2016, each intercom intended for passenger use shall be marked in accordance with section 5.4.2 of APTA PR–PS–S–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' Authorized October 7, 2007, or an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21. Legible and understandable operating instructions shall be posted at or near each such intercom. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of the incorporated document from the American Public Transportation Association, 1666 K Street NW., Washington, DC 20006, *www.aptastandards.com.* You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *Back-up power.* PA and intercom systems in Tier I passenger cars ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and in all Tier II passenger cars shall have a back-up power system capable of—

* * * * *

■ 8. Section 238.123 is amended by redesignating paragraph (e) introductory text as paragraph (e)(1), redesignating paragraphs (e)(1) and (2) as paragraphs (e)(1)(i) and (ii), revising the first sentence of newly redesignated paragraph (e)(1), and by adding paragraph (e)(2) to read as follows:

**§ 238.123 Emergency roof access.**

* * * * *

(e) *Marking and instructions.* (1) Prior to January 28, 2015, each emergency roof access location shall be conspicuously marked with retroreflective material of contrasting color. * * *

* * * * *

(2) On or after January 28, 2015, each emergency roof access location shall be marked, and instructions provided for its use, as specified in § 238.125.

■ 9. Section 238.125 is added to read as follows:

**§ 238.125 Marking and instructions for emergency egress and rescue access.**

On or after January 28, 2015, emergency signage and markings shall be provided for each passenger car in accordance with the minimum requirements specified in APTA PR–PS–S–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' Authorized October 7, 2007, or an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of the incorporated document from the American Public Transportation Association, 1666 K Street NW., Washington, DC 20006, *www.aptastandards.com.* You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

■ 10. Section 238.127 is added to read as follows:

**§ 238.127 Low-location emergency exit path marking.**

On or after January 28, 2015, low-location emergency exit path marking shall be provided in each passenger car in accordance with the minimum requirements specified in APTA PR–PS–S–004–99, Rev. 2, ''Standard for Low-Location Exit Path Marking,'' Authorized October 7, 2007, or an alternative standard providing at least an equivalent level of safety, if approved by FRA pursuant to § 238.21. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of the incorporated document from the American Public Transportation Association, 1666 K Street NW., Washington, DC 20006, *www.aptastandards.com.* You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*

**§ 238.235 [Removed and reserved]**

■ 11. Section 238.235 is removed and reserved.

■ 12. Section 238.303 is amended by revising paragraph (e)(18) introductory text to read as follows:

**§ 238.303 Exterior calendar day mechanical inspection of passenger equipment.**

* * * * *

(e) * * *

(18) All rescue-access-related exterior markings, signage, and instructions required by §§ 238.112 and 238.114 shall be in place and, as applicable, conspicuous or legible, or both.

* * * * *

■ 13. Section 238.305 is amended by revising paragraph (a), revising paragraph (c) introductory text, adding paragraphs (c)(11) and (13), and revising paragraph (d) introductory text to read as follows:

**§ 238.305 Interior calendar day mechanical inspection of passenger cars.**

(a) Except as provided in paragraph (e) of this section, each passenger car shall receive an interior mechanical inspection at least once each calendar day that it is placed in service.

* * * * *

(c) As part of the interior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the car defective when discovered in service, except as provided in paragraphs (c)(8) through (13) and paragraph (d) of this section.

* * * * *

(11) Low-location emergency exit path markings required by § 238.127 are in place and conspicuous.

* * * * *

(13) Removable panels and removable windows in vestibule doors and in other interior doors used for passage through a passenger car are properly in place and secured, based on a visual inspection. A noncomplying passenger car may remain in passenger service until no later than the car's fourth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, or for a passenger car used in long-distance intercity train service until the eighth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the noncomplying condition is discovered, where it shall be repaired or removed from service; provided—

(i) The railroad has developed and follows written procedures for mitigating the hazard(s) caused by the noncomplying condition. The railroad's procedures shall include consideration of the type of door in which the removable panel or removable window is located, the manner in which the door is normally opened, and the risk of personal injury resulting from a missing, broken, or improperly secured removable panel or removable window; and

(ii) The train crew is provided written notification of the noncomplying condition.

(d) Any passenger car found not to be in compliance with the requirements contained in paragraphs (c)(5) through (11) of this section at the time of its interior calendar day mechanical inspection may remain in passenger service until the car's next interior calendar day mechanical inspection, where it must be repaired or removed from passenger service; provided, all of the specific conditions contained in paragraphs (c)(8) through (10) of this section are met and all of the following requirements are met:

* * * * *

■ 14. Section 238.307 is amended by revising paragraphs (c)(4) and (5) and (e)(1) introductory text to read as follows:

**§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.**

* * * * *

(c) * * *

(4)(i) A representative sample of the following emergency systems properly operate:

(A) Door removable panels, removable windows, manual override devices, and retention mechanisms, as applicable, in accordance with § 238.112; and

(B) Emergency window exits, in accordance with § 238.113.

(ii) This portion of the periodic mechanical inspection may be conducted independently of the other requirements in this paragraph (c); and

(iii) Each railroad shall retain records of the inspection, testing, and maintenance of the emergency window exits for two calendar years after the end of the calendar year to which they relate.

(5) With regard to the following emergency systems:

(i) Emergency lighting systems required under § 238.115 are in place and operational; and

(ii) Low-location emergency exit path marking systems required under § 238.127 are operational.

* * * * *

(e) * * *

(1) A record shall be maintained of each periodic mechanical inspection required to be performed by this section. This record shall be maintained in writing or electronically, provided FRA has access to the record upon request. The record shall be maintained either in the railroad's files, the cab of the locomotive, or a designated location in the passenger car. Except as provided in paragraph (c)(4) of this section, the record shall be retained until the next periodic mechanical inspection of the same type is performed and shall contain the following information:

* * * * *

■ 15. Section 238.439 is amended by adding introductory text, removing paragraphs (a), (b), (e), and (g), redesignating paragraphs (c), (d), and (f) as paragraphs (a) through (c), revising newly redesignated paragraph (c) to read as follows:

**§ 238.439 Doors.**

In addition to the requirements of § 238.112—

* * * * *

(c) For a passenger car ordered prior to January 28, 2014, and placed in service prior to January 29, 2018, a passenger compartment end door (other than a door providing access to the exterior of the trainset) shall be equipped with a kick-out panel, pop-out window, or other similar means of egress in the event the door will not open, or shall be so designed as to pose a negligible probability of becoming inoperable in the event of car body distortion following a collision or derailment.

■ 16. Section 238.441 is amended by adding a sentence at the end of paragraph (a) to read as follows:

**§ 238.441 Emergency roof access.**

(a) * * * On or after January 28, 2015, such markings shall also conform with the requirements specified in § 238.125.

* * * * *

■ 17. Appendix A to part 238 is amended by adding the entries for new §§ 238.112, 238.125, and 238.127 in numerical order and removing and reserving the entry for § 238.235.

The additions read as follows:

**Appendix A to Part 238—Schedule of Civil Penalties** [1, 2]

| Section | | Violation | Willful violation |
|---|---|---|---|
| * * * * * | | * | * |
| **SUBPART B—SAFETY PLANNING AND GENERAL REQUIREMENTS** | | | |
| * * * * * | | * | * |
| 238.112 | Door emergency egress and rescue access systems | 2,500 | 5,000 |
| * * * * * | | * | * |
| 238.125 | Marking and instructions for emergency egress and rescue access | 2,500 | 5,000 |
| * * * * * | | * | * |
| 238.127 | Low-location emergency exit path marking | 2,500 | 5,000 |
| * * * * * | | * | * |

[1] A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $16,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to $105,000 for any violation where circumstances warrant. *See* 49 CFR Part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in § 238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement.

Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in § 238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or § 238.429 concerning the substantive defective condition.

The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under § 238.303 and § 238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under § 238.313 through § 238.319 may be assessed for each train that is not properly inspected.

[2] The penalty schedule uses section numbers from 49 CFR Part 238. If more than one item is listed as a type of violation of a given section, each item is also designated by a ''penalty code,'' which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

## PART 239—[AMENDED]

■ 18. The authority citation for part 239 is revised to read as follows:

**Authority:** 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89(c), (g), (m).

■ 19. Section 239.105 is amended by revising paragraph (a) to read as follows:

### § 239.105 Debriefing and critique.

(a) *General.* Except as provided in paragraph (b) of this section, each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or full-scale simulation to determine the effectiveness of its emergency preparedness plan, and shall improve or amend its plan, or both, as appropriate, in accordance with the information developed. The debriefing and critique session shall be conducted within 60 days of the date of the passenger train emergency situation or full-scale simulation. To the extent practicable, all on-board personnel, control center personnel, and any other employees involved in the emergency situation or full-scale simulation shall participate in the session either:

(1) In person;

(2) Offsite via teleconference; or

(3) In writing, by a statement responding to questions provided prior to the session, and by responding to any follow-up questions.

* * * * *

### § 239.107 [Removed and reserved]

■ 20. Section 239.107 is removed and reserved.

## Appendix A to Part 239—[Amended]

■ 21. Appendix A to part 239 is amended by removing and reserving the entry for § 239.107.

Issued in Washington, DC, on November 14, 2013.

**Karen J. Hedlund,**

*Deputy Administrator.*

[FR Doc. 2013–27731 Filed 11–27–13; 8:45 am]

BILLING CODE 4910–06–P

# FEDERAL REGISTER

Vol. 78 Friday,

No. 230 November 29, 2013


Part IV

## Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 50

## Federal Reserve System

12 CFR Part 249

## Federal Deposit Insurance Corporation

12 CFR Part 329

Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 50**

**[Docket ID OCC–2013–0016]**

**RIN 1557 AD 74**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 249**

**[Regulation WW; Docket No. R–1466]**

**RIN 7100 AE–03**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 329**

**RIN 3064–AE04**

## Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring

**AGENCIES:** Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking with request for public comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are requesting comment on a proposed rule (proposed rule) that would implement a quantitative liquidity requirement consistent with the liquidity coverage ratio standard established by the Basel Committee on Banking Supervision. The requirement is designed to promote the short-term resilience of the liquidity risk profile of internationally active banking organizations, thereby improving the banking sector's ability to absorb shocks arising from financial and economic stress, as well as improvements in the measurement and management of liquidity risk. The proposed rule would apply to all internationally active banking organizations, generally, bank holding companies, certain savings and loan holding companies, and depository institutions with more than $250 billion in total assets or more than $10 billion in on-balance sheet foreign exposure, and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets. The proposed rule would also apply to companies designated for supervision by the Board by the Financial Stability Oversight Council under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act that do not have significant insurance operations and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets. The Board also is proposing on its own a modified liquidity coverage ratio standard that is based on a 21-calendar day stress scenario rather than a 30 calendar-day stress scenario for bank holding companies and savings and loan holding companies without significant insurance or commercial operations that, in each case, have $50 billion or more in total consolidated assets.

**DATES:** Comments on this notice of proposed rulemaking must be received by January 31, 2014.

**ADDRESSES:** Comments should be directed to:

*OCC:* Because paper mail in the Washington, DC area is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0016'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments. Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''Docket ID OCC–2013–0016'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2013–0016'' in the Search box and click ''Search''. Comments can be filtered by Agency using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

*Board:* You may submit comments, identified by Docket No. R–1466, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include 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 are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm 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 Street NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

*FDIC:* You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.*

*Instructions:* Comments submitted must include ''FDIC'' and ''RIN 3064–AE04.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Kerri Corn, Director, Credit and Market Risk Division, (202) 649–6398; Linda M. Jennings, National Bank Examiner, (980) 387–0619; Patrick T. Tierney, Special Counsel, or Tiffany Eng, Law Clerk, Legislative and Regulatory Activities Division, (202) 649–5490; or Adam S. Trost, Senior Attorney, Securities and Corporate Practices Division, (202) 649–5510 Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

*Board:* Anna Lee Hewko, Deputy Associate Director, (202) 530–6260; David Emmel, Manager, (202) 912–4612, Credit, Market and Liquidity Risk Policy; Ann McKeehan, Senior Supervisory Financial Analyst, (202) 972–6903; Andrew Willis, Senior Financial Analyst, (202) 912–4323, Capital and Regulatory Policy; April C. Snyder, Senior Counsel, (202) 452–3099; or Dafina Stewart, Senior Attorney, (202) 452–3876, 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.

*FDIC:* Kyle Hadley, Chief, Examination Support Section, (202) 898–6532; Rebecca Berryman, Senior Capital Markets Policy Specialist, (202) 898–6901; Eric Schatten, Capital Markets Policy Analyst, (202) 898–7063, Capital Markets Branch Division of Risk Management Supervision, (202) 898–6888; Gregory Feder, Counsel, (202) 898–8724; or Sue Dawley, Senior Attorney, (202) 898–6509, Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

## Table of Contents


I. Introduction
A. Summary of the Proposed Rule
B. Background
C. Overview of the Proposed Rule
II. Minimum Liquidity Coverage Ratio
A. High-Quality Liquid Assets
*1. Liquidity Characteristics of HQLA*
a. Risk Profile
b. Market-based Characteristics
c. Central Bank Eligibility
*2. Qualifying Criteria for Categories of HQLA*
a. Level 1 Liquid Assets
b. Level 2A Liquid Assets
c. Level 2B Liquid Assets
*3. Operational Requirements for HQLA*
*4. Generally Applicable Criteria for HQLA*
a. Unencumbered
b. Client Pool Security
c. Treatment of HQLA held by U.S. Consolidated Subsidiaries
e. Exclusion of Rehypothecated Assets
f. Exclusion of Assets Designated as Operational
*5. Calculation of the HQLA Amount*
a. Calculation of Unadjusted Excess HQLA Amount
b. Calculation of Adjusted Excess HQLA Amount
c. Example HQLA Calculation
B. Total Net Cash Outflow
*1. Determining the Maturity of Instruments and Transactions*
*2. Cash Outflow Categories*
a. Unsecured Retail Funding Outflow Amount
b. Structured Transaction Outflow Amount
c. Net Derivative Cash Outflow Amount
d. Mortgage Commitment Outflow Amount
e. Commitment Outflow Amount
f. Collateral Outflow Amount
g. Brokered Deposit Outflow Amount for Retail Customers or Counterparties
h. Unsecured Wholesale Funding Outflow Amount
i. Debt Security Outflow Amount
j. Secured Funding and Asset Exchange Outflow Amount
k. Foreign Central Bank Borrowings
l. Other Contractual Outflow Amounts
m. Excluded Amounts for Intragroup Transactions
*3. Total Cash Inflow Amount*
a. Items not included as inflows
b. Net Derivatives Cash Inflow Amount
c. Retail Cash Inflow Amount
d. Unsecured Wholesale Cash Inflow Amount
e. Securities Cash Inflow Amount
f. Secured Lending and Asset Exchange Cash Inflow Amount
III. Liquidity Coverage Ratio Shortfall
IV. Transition and Timing
V. Modified Liquidity Coverage Ratio Applicable to Bank and Savings and Loan Holding Companies
A. Overview and Applicability
B. High-Quality Liquid Assets
C. Total Net Cash Outflow
VI. Solicitation of Comments on Use of Plain Language
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act
IX. OCC Unfunded Mandates Reform Act of 1995 Determination


## I. Introduction

### *A. Summary of the Proposed Rule*

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are requesting comment on a proposed rule (proposed rule) that would implement a liquidity coverage ratio requirement, consistent with the international liquidity standards published by the Basel Committee on Banking Supervision (BCBS),[1] for large, internationally active banking organizations, nonbank financial companies designated by the Financial Stability Oversight Council for Board supervision that do not have substantial insurance activities (covered nonbank companies), and their consolidated subsidiary depository institutions with total assets greater than $10 billion. The BCBS published the international liquidity standards in December 2010 as a part of the Basel III reform package[2] and revised the standards in January 2013 (as revised, the Basel III Revised Liquidity Framework).[3] The Board also is proposing on its own to implement a modified version of the liquidity coverage ratio requirement as an enhanced prudential standard for bank holding companies and savings and loan holding companies with at least

[1] The BCBS is a committee of banking supervisory authorities that was established by the central bank governors of the G10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org.*

[2] ''Basel III: International framework for liquidity risk measurement, standards and monitoring'' (December 2010), available at *http://www.bis.org/publ/bcbs188.pdf* (Basel III Liquidity Framework).

[3] ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' (January 2013), available at *http://www.bis.org/publ/bcbs238.htm.*

$50 billion in total consolidated assets that are not internationally active and do not have substantial insurance activities. This modified approach is described in section V of this preamble.

As described in more detail below, the proposed rule would establish a quantitative minimum liquidity coverage ratio that builds upon the liquidity coverage methodologies traditionally used by banking organizations to assess exposures to contingent liquidity events. The proposed rule would complement existing supervisory guidance and the more qualitative liquidity requirements that the Board proposed, in consultation with the OCC and the FDIC, pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) [4] and would establish transition periods for conformance with the new requirements.

*B. Background*

The recent financial crisis demonstrated significant weaknesses in the liquidity positions of banking organizations, many of which experienced difficulty meeting their obligations due to a breakdown of the funding markets. As a result, many governments and central banks across the world provided unprecedented levels of liquidity support to companies in the financial sector in an effort to sustain the global financial system. In the United States, the Board and the FDIC established various temporary liquidity facilities to provide sources of funding for a range of asset classes.

These events came in the wake of a period characterized by ample liquidity in the financial system. The rapid reversal in market conditions and the declining availability of liquidity during the financial crisis illustrated both the speed with which liquidity can evaporate and the potential for protracted illiquidity during and following these types of market events. In addition, the recent financial crisis highlighted the pervasive detrimental effect of a liquidity crisis on the banking sector, the financial system, and the economy as a whole.

Banking organizations' failure to adequately address these challenges was in part due to lapses in basic liquidity risk management practices. Recognizing the need for banking organizations to improve their liquidity risk management and to control their liquidity risk exposures, the agencies worked with regulators from foreign jurisdictions to establish international liquidity standards. These standards include the principles based on supervisory expectations for liquidity risk management in the ''Principles for Sound Liquidity Management and Supervision'' (Basel Liquidity Principles).[5] In addition to these principles, the BCBS established quantitative standards for liquidity in the ''Basel III: International framework for liquidity risk measurement, standards and monitoring'' [6] in December 2010, which introduced a liquidity coverage ratio (2010 LCR) and a net stable funding ratio (NSFR), as well as a set of liquidity monitoring tools. These reforms were intended to strengthen liquidity and promote a more resilient financial sector by improving the banking sector's ability to absorb shocks arising from financial and economic stress. Subsequently, in January 2013, the BCBS issued ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' (Basel III LCR),[7] which updated key components of the 2010 LCR as part of the Basel III liquidity framework.[8] The agencies acknowledge that there is ongoing international study of the interaction between the Basel III LCR and central bank operations. The agencies are working with the BCBS on these matters and would consider amending the proposal if the BCBS proposes modifications to the Basel III LCR.

The Basel III LCR establishes for the first time an internationally harmonized quantitative liquidity standard that has the primary objective of promoting the short-term resilience of the liquidity risk profile of internationally active banking organizations. The Basel III LCR is designed to improve the banking sector's ability to absorb, without reliance on government support, shocks arising from financial and economic stress, whatever the source, thus reducing the risk of spillover from the financial sector to the broader economy.

Beginning in January 2015, under the Basel III LCR, internationally active banking organizations would be required to hold sufficient high-quality liquid assets (HQLA) to meet their obligations and other liquidity needs that are forecasted to occur during a 30 calendar-day stress scenario. To meet the Basel III LCR standard, the HQLA must be unencumbered by liens and other restrictions on transferability and must be convertible into cash easily and immediately in deep, active private markets.

Current U.S. regulations do not require banking organizations to meet a quantitative liquidity standard. Rather, the agencies evaluate a banking organization's methods for measuring, monitoring, and managing liquidity risk on a case-by-case basis in conjunction with their supervisory processes.[9] Since the financial crisis, the agencies have worked to establish a more rigorous supervisory and regulatory framework for U.S. banking organizations that would incorporate and build upon the BCBS standards. First, the agencies, together with the National Credit Union Administration and the Conference of State Bank Supervisors, issued guidance titled the ''Interagency Policy Statement on Funding and Liquidity Risk Management'' (Liquidity Risk Policy Statement) in March 2010.[10] The Liquidity Risk Policy Statement incorporates elements of the Basel Liquidity Principles and is supplemented by other liquidity risk management principles previously issued by the agencies. The Liquidity Risk Policy Statement specifies supervisory expectations for fundamental liquidity risk management practices, including a comprehensive management process for identifying, measuring, monitoring, and controlling liquidity risk. The Liquidity Risk Policy Statement also emphasizes the central role of corporate governance, cash-flow projections, stress testing, ample liquidity resources, and formal contingency funding plans as necessary tools for effectively measuring and managing liquidity risk.

Additionally, in 2012, pursuant to section 165 of the Dodd-Frank Act,[11] the Board proposed enhanced liquidity standards for large U.S. banking firms,

[4] *See* ''Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies,'' 77 FR 594 (Jan. 5, 2010); ''Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies,'' 77 FR 76628 (Dec. 28, 2012).

[5] Principles for Sound Liquidity Risk Management and Supervision (September 2008), available at *http://www.bis.org/publ/bcbs144.htm.*

[6] Basel III Liquidity Framework, *supra* note 2.

[7] Basel III Revised Liquidity Framework, *supra* note 3.

[8] Key provisions of the 2010 LCR that were updated by the BCBS in 2013 include expanding the definition of high-quality liquid assets, technical changes to the calculation of various inflow and outflow rates, introducing a phase-in period for implementation, and a variety of rules text clarifications. *See http://www.bis.org/press/p130106b.pdf* for a complete list of revisions to the 2010 LCR.

[9] For instance, the Uniform Financial Rating System adopted by the Federal Financial Institutions Examination Council (FFIEC) requires examiners to assign a supervisory rating that assesses a banking organization's liquidity position and liquidity risk management.

[10] 75 FR 13656 (March 22, 2010).

[11] *See* 12 U.S.C. 5365.

certain foreign banking organizations, and nonbank financial companies designated by the Financial Stability Oversight Council for Board supervision.[12] These enhanced liquidity standards include corporate governance provisions, senior management responsibilities, independent review, a requirement to hold highly liquidity assets to cover stressed liquidity needs based on internally developed stress models, a contingency funding plan, and specific limits on potential sources of liquidity risk.[13]

The proposed rule would further enhance the supervisory efforts described above, which are aimed at measuring and managing liquidity risk, by implementing a minimum quantitative liquidity requirement in the form of a liquidity coverage ratio. This quantitative requirement would focus on short-term liquidity risks and would benefit the financial system as a whole by improving the ability of companies subject to the proposal to absorb potential market and liquidity shocks in a severe stress scenario over a short term. The agencies are proposing to establish a minimum liquidity coverage ratio that would be consistent with the Basel III LCR, with some modifications to reflect characteristics and risks of specific aspects of the U.S. market and U.S. regulatory framework, as described in this preamble. For instance, in recognition of the strong liquidity positions many U.S. banking organizations and other companies that would be subject to the proposal have achieved since the recent financial crisis, the proposed rule includes transition periods that are similar to, but shorter than, those set forth in the Basel III LCR. These proposed transition periods are designed to give companies subject to the proposal sufficient time to adjust to the proposed rule while minimizing any potential adverse impact that implementation could have on the U.S. banking system.

The agencies note that the BCBS is in the process of reviewing the NSFR that was included in the BCBS liquidity framework when it was first published in 2010. While the Basel III LCR is focused on measuring liquidity resilience over a short-term period of severe stress, the NSFR is designed to promote resilience over a one-year time horizon by creating additional incentives for banking organizations and other financial companies that would be subject to the standard to fund their activities with more stable sources and encouraging a sustainable maturity structure of assets and liabilities. Currently, the NSFR is in an international observation period as the agencies work with other BCBS members and the banking industry to gather data and study the impact of the proposed NSFR standard on the banking system. The agencies are carefully considering what changes to the NSFR they may recommend to the BCBS based on the results of this assessment. The agencies anticipate that they would issue a proposed rulemaking implementing the NSFR in advance of its scheduled global implementation in 2018.

*C. Overview of the Proposed Rule*

The proposed rule would establish a minimum liquidity coverage ratio applicable to all internationally active banking organizations, that is, banking organizations with $250 billion or more in total assets or $10 billion or more in on-balance sheet foreign exposure, and to consolidated subsidiary depository institutions of internationally active banking organizations with $10 billion or more in total consolidated assets (collectively, covered banking organizations). Thus, the rule would not apply to institutions that have opted in to the advanced approaches capital rule;[14] the agencies are seeking comment on whether to apply the rule to opt-in banking organizations. The proposed rule would also apply to covered nonbank companies, and to consolidated subsidiary depository institutions of covered nonbank companies with $10 billion or more in total consolidated assets (together with covered banking organizations and covered nonbank companies, covered companies). The proposed rule would not apply to a bridge financial company or a subsidiary of a bridge financial company, a new depository institution or a bridge depository institution, as those terms are used in the resolution context.[15] The agencies believe that requiring the FDIC to maintain a minimum liquidity coverage ratio in these entities would inappropriately constrain the FDIC's ability to resolve a depository institution or its affiliated companies in an orderly manner.[16]

The Board also is proposing on its own to implement a modified version of the liquidity coverage ratio as an enhanced prudential standard for bank holding companies and savings and loan holding companies without significant insurance or commercial operations that, in each case, have $50 billion or more in total consolidated assets, but are not covered companies for the purposes of the proposed rule.[17]

The agencies are reserving the authority to apply the proposed rule to a company not meeting the asset thresholds described above if it is determined that the application of the proposed liquidity coverage ratio would be appropriate in light of a company's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered companies, or risk to the financial system. A covered company would remain subject to the proposed rule until its primary Federal supervisor determines in writing that application of the proposed rule to the company is not appropriate in light of these same factors. Moreover, nothing in the proposed rule would limit the authority of the agencies under any other provision of law or regulation to take supervisory or enforcement actions, including actions to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law. The agencies also are reserving the authority to require a covered company to hold an amount of HQLA greater than otherwise required under the proposed rule, or to take any other measure to improve the covered company's liquidity risk profile, if the relevant agency determines that the

[12] *See* 77 FR 594 (Jan. 5, 2012); 77 FR 76628 (Dec. 28, 2012).

[13] *See* 12 U.S.C. 5365.

[14] *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Federal Reserve), and 12 CFR part 324 (FDIC).

[15] *See* 12 U.S.C. 1813(i) and 12 U.S.C. 5381(a)(3).

[16] Pursuant to the International Banking Act (IBA), 12 U.S.C. 3101 *et seq.*, and OCC regulation, 12 CFR 28.13(a)(1), a Federal branch or agency regulated and supervised by the OCC has the same rights and responsibilities as a national bank operating at the same location. Thus, as a general matter, Federal branches and agencies are subject to the same laws as national banks. The IBA and the OCC regulation state, however, that this general standard does not apply when the IBA or other applicable law provides other specific standards for Federal branches or agencies, or when the OCC determines that the general standard should not apply. This proposal would not apply to Federal branches and agencies of foreign banks operating in the United States. At this time, these entities have assets that are substantially below the proposed $250 billion asset threshold for applying the proposed liquidity standard to an internationally active banking organization. As part of its supervisory program for Federal branches and agencies of foreign banks, the OCC reviews liquidity risks and takes appropriate action to limit such risks in those entities. In addition, the OCC is monitoring other emerging initiatives in the U.S. that may impact liquidity risk supervision of Federal branches and agencies of foreign banks before considering applying a liquidity coverage ratio requirement to them.

[17] Total consolidated assets for the purposes of the proposed rule would be as reported on a covered banking organization's most recent year-end Consolidated Reports of Condition and Income or Consolidated Financial Statements for Bank Holding Companies, Federal Reserve Form FR Y–9C. Foreign exposure data would be calculated in accordance with the Federal Financial Institution Examination Council 009 Country Exposure Report.

covered company's liquidity requirements as calculated under the proposed rule are not commensurate with its liquidity risks. In making such determinations, the agencies will apply notice and response procedures as set forth in their respective regulations.

The proposed liquidity coverage ratio would require a covered company to maintain an amount of HQLA meeting the criteria set forth in the proposed rule (the numerator of the ratio) that is no less than 100 percent of its total net cash outflows over a prospective 30 calendar-day period, as calculated in accordance with the proposed rule (the denominator of the ratio). Under the proposed rule, certain categories of assets may qualify as HQLA if they are unencumbered by liens and other restrictions on transfer so that they can be converted into cash quickly with little to no loss in value. Access to HQLA would enhance the ability of a covered company to meet its liquidity needs during an acute short-term liquidity stress scenario. A covered company's total net cash outflow amount would be determined by applying outflow and inflow rates, which reflect certain stressed assumptions, against the balances of a covered company's funding sources, obligations, and assets over a prospective 30 calendar-day period.

As further described below, the measures of total cash outflow and total cash inflow, and the outflow and inflow rates used in their determination, are meant to reflect aspects of the stress events experienced during the recent financial crisis. Consistent with the Basel III LCR, these components of the proposed rule take into account the potential impact of idiosyncratic and market-wide shocks, including those that would result in: (1) A partial loss of retail deposits and brokered deposits for retail customers; (2) a partial loss of unsecured wholesale funding capacity; (3) a partial loss of secured, short-term financing with certain collateral and counterparties; (4) losses from derivative positions and the collateral supporting those positions; (5) unscheduled draws on committed credit and liquidity facilities that a covered company has provided to its clients; (6) the potential need for a covered company to buy back debt or to honor non-contractual obligations in order to mitigate reputational and other risks; and (7) other shocks which affect outflows linked to structured financing transactions, mortgages, central bank borrowings, and customer short positions.

As noted above, covered companies generally would be required to maintain, on a consolidated basis, a liquidity coverage ratio equal to or greater than 100 percent. However, the agencies recognize that under certain circumstances, it may be necessary for a covered company's liquidity coverage ratio to briefly fall below 100 percent to fund unanticipated liquidity needs.

However, a liquidity coverage ratio below 100 percent may also reflect a significant deficiency in a covered company's management of liquidity risk. Therefore, the proposed rule would establish a framework for flexible supervisory response when a covered company's liquidity coverage ratio falls below 100 percent. Under the proposed rule, a covered company would be required to notify its primary Federal supervisor on any business day that its liquidity coverage ratio is less than 100 percent. In addition, if the liquidity coverage ratio is below 100 percent for three consecutive business days, a covered company would be required to submit to its primary Federal supervisor a plan for remediation of the shortfall. These procedures, which are described in further detail in this preamble, are intended to enable supervisors to monitor and respond appropriately to the unique circumstances that are giving rise to a covered company's liquidity coverage ratio shortfall.

Consistent with the BCBS liquidity framework, the proposed rule, once finalized, would be effective as of January 1, 2015, subject to a transition period. Under the proposed rule's transition provisions, covered companies would be required to comply with a minimum liquidity coverage ratio of 80 percent as of January 1, 2015. From January 1, 2016, through December 31, 2016, the minimum liquidity coverage ratio would be 90 percent. Beginning on January 1, 2017 and thereafter, all covered companies would be required to maintain a liquidity coverage ratio of 100 percent.

The proposed rule's liquidity coverage ratio is based on a standardized supervisory stress scenario. While the liquidity coverage ratio would establish one scenario for stress testing, supervisors expect companies that would be subject to the proposed rule to maintain robust stress testing frameworks that incorporate additional scenarios that are more tailored to the risks within their firms. Companies should use these additional scenarios in conjunction with the proposed rule's liquidity coverage ratio to appropriately determine their liquidity buffers. The agencies note that the liquidity coverage ratio is a minimum requirement and organizations that pose more systemic risk to the U.S. banking system or whose liquidity stress testing indicates a need for higher liquidity buffers may need to take additional steps beyond meeting the minimum ratio in order to meet supervisory expectations.

The BCBS liquidity framework also establishes liquidity risk monitoring mechanisms designed to strengthen and promote global consistency in liquidity risk supervision. These mechanisms include information on contractual maturity mismatch, concentration of funding, available unencumbered assets, liquidity coverage ratio reporting by significant currency, and market-related monitoring tools. At this time, the agencies are not proposing to implement these monitoring mechanisms as regulatory standards or requirements. However, the agencies intend to obtain information from covered companies to enable the monitoring of liquidity risk exposure through reporting forms and from information the agencies collect through other supervisory processes.

The proposed rule would provide enhanced information about the short-term liquidity profile of a covered company to managers and supervisors. With this information, the covered company's management and supervisors would be better able to assess the company's ability to meet its projected liquidity needs during periods of liquidity stress; take appropriate actions to address liquidity needs; and, in situations of failure, to implement an orderly resolution of the covered company. The agencies anticipate that they will separately seek comment upon proposed regulatory reporting requirements and instructions pertaining to a covered company's disclosure of the proposed rule's liquidity coverage ratio in a subsequent notice.

The agencies request comment on all aspects of the proposed rule, including comment on the specific issues raised throughout this preamble. The agencies request that commenters provide detailed qualitative or quantitative analysis, as appropriate, as well as any relevant data and impact analysis to support their positions.

## II. Minimum Liquidity Coverage Ratio

Under the proposed rule, a covered company would be required to calculate its liquidity coverage ratio as of a particular date, which is defined in the proposed rule as the calculation date. The proposed rule would require a covered company to calculate its liquidity coverage ratio daily as of a set time selected by the covered company prior to the effective date of the rule and communicated in writing to its primary

Federal supervisor. Subsequent to this election, a covered company could only change the time as of which it calculates its liquidity coverage ratio daily with the written approval of its Federal supervisor.

A covered company would calculate its liquidity coverage ratio by dividing its amount of HQLA by total net cash outflows, which would be equal to the highest daily amount of cumulative net cash outflows within the 30 calendar days following a calculation date (30 calendar-day stress period). A covered company would not be permitted to double count items in this computation. For example, if an asset is included as a part of the stock of HQLA, such asset may not also be counted as cash inflows in the denominator.

The following discussion addresses the proposed criteria for HQLA, which are meant to reflect the characteristics the agencies believe are associated with the most liquid assets banking organizations typically hold. The discussion also explains how HQLA would be calculated under the proposed rule, including its constituent components, and the proposed caps and haircuts applied to those components.

Next, the discussion describes total net cash outflows, the denominator of the liquidity coverage ratio. This discussion explains the items that would be included in total cash outflows and total cash inflows, as well as rules for determining whether instruments mature or transactions occur within a 30 calendar-day stress period for the purposes of the liquidity coverage ratio's calculation. The discussion concludes by describing the regulatory framework for supervisory response if a covered company's liquidity coverage ratio falls below 100 percent.

1. *What operational or other issues arise from requiring the calculation of the liquidity coverage ratio as of a set time selected by a covered company prior to the effective date of the rule? What significant operational costs, such as technological improvements, or other operational difficulties, if any, may arise from the requirement to calculate the liquidity coverage ratio on a daily basis? What alternatives to daily calculation should the agencies consider and why?*

2. *The proposed rule would require a covered company to calculate its HQLA on a daily basis. Should the agencies impose any limits with regard to covered companies' ability to transfer HQLA on an intraday basis between entities? Why or why not? In particular, what appropriate limits should the agencies consider with regard to intraday movements of HQLA between domestic and foreign entities, including foreign branches?*

*A. High-Quality Liquid Assets*

The numerator of the proposed liquidity coverage ratio would be comprised of a covered company's HQLA, subject to the qualifying criteria and compositional limitations described below (HQLA amount). These proposed criteria and limitations are meant to ensure that a covered company's HQLA amount only includes assets with a high potential to generate liquidity through sale or secured borrowing during a stress scenario.

Consistent with the Basel III LCR, the agencies are proposing to divide HQLA into three categories of assets: level 1, level 2A and level 2B liquid assets. Specifically and as described in greater detail below, the agencies are proposing that level 1 liquid assets, which are the highest quality and most liquid assets, be included in a covered company's HQLA amount without a limit. Level 2A and 2B liquid assets have characteristics that are associated with being relatively stable and significant sources of liquidity, but not to the same degree as level 1 liquid assets. Accordingly, level 2A liquid assets would be subject to a 15 percent haircut and, when combined with level 2B liquid assets, could not exceed 40 percent of the total stock of HQLA. Level 2B liquid assets, which are associated with a lesser degree of liquidity and more volatility than level 2A liquid assets, would be subject to a 50 percent haircut and could not exceed 15 percent of the total stock of HQLA. These haircuts and caps are set forth in section 21 of the proposed rule.

A covered company would include assets in each HQLA category as required by the proposed rule as of a calculation date, irrespective of an asset's residual maturity. A description of the methodology for calculating the HQLA amount, including the caps on level 2A and level 2B liquid assets and the requirement to calculate adjusted and unadjusted amounts of HQLA, is described in section II.A.5 below.

1. Liquidity Characteristics of HQLA

Assets that would qualify as HQLA should be easily and immediately convertible into cash with little or no loss of value during a period of liquidity stress. In identifying the types of assets that would qualify as HQLA, the agencies considered the following categories of liquidity characteristics, which are generally consistent with those of the Basel III LCR: (a) Risk profile; (b) market-based characteristics; and (c) central bank eligibility.

a. Risk Profile

Assets that are appropriate for consideration as HQLA tend to be lower risk. There are various forms of risk that can be associated with an asset, including liquidity risk, market risk, credit risk, inflation risk, foreign exchange risk, and the risk of subordination in a bankruptcy or insolvency. Assets appropriate for consideration as HQLA would be expected to remain liquid across various stress scenarios and should not suddenly lose their liquidity upon the occurrence of a certain type of risk. Also, these assets generally experience ''flight to quality'' during a crisis, wherein investors sell their other holdings to buy more of these assets in order to reduce the risk of loss and increase the ability to monetize assets as necessary to meet their own obligations.

Assets that may be highly liquid under normal conditions but experience wrong-way risk and could become less liquid during a period of stress would not be appropriate for consideration as HQLA. For example, securities issued or guaranteed by many companies in the financial sector [18] have been more prone to lose value and, as a result, become less liquid and lose value in times of liquidity stress due to the high correlation between the health of these companies and the health of the financial markets generally. This correlation was evident during the recent financial crisis, as most debt issued by such companies traded at significant discounts for a prolonged period. Because of this high potential for wrong-way risk, consistent with the Basel III LCR standard, the proposed rule would exclude assets issued by companies that are primary actors in the financial sector from HQLA.[19]

b. Market-Based Characteristics

The agencies also have found that assets appropriate for consideration as HQLA generally exhibit characteristics that are market-based in nature. First, these assets tend to have active outright sale or repurchase markets at all times with significant diversity in market participants as well as high volume. This market-based liquidity characteristic may be demonstrated by historical evidence, including evidence during recent periods of market liquidity stress, of low bid-ask spreads, high trading volumes, a large and diverse number of market participants, and other factors. Diversity of market participants, on both the buy and sell

[18] *See infra* section II.A.2.c.

[19] Identification of companies with high potential for wrong-way risk under the proposal is discussed below in section II.A.2.

sides, is particularly important because it tends to reduce market concentration and is a key indicator that a market will remain liquid. Also, the presence of multiple committed market makers is another sign that a market is liquid.

Second, assets that are appropriate for consideration as HQLA generally tend to have prices that do not incur sharp price declines, even during times of stress. Volatility of traded prices and bid-ask spreads during normal times are simple proxy measures of market volatility; however, there should be historical evidence of relative stability of market terms (such as prices and haircuts) and volumes during stressed periods. To the extent that an asset exhibits price or volume fluctuation during times of stress, assets appropriate for consideration as HQLA tend to increase in value and experience a flight to quality during such times, as historically, the market moves into more liquid assets in times of systemic crisis.

Third, assets that can serve as HQLA tend to be easily and readily valued. The agencies generally have found that an asset's liquidity is typically higher if market participants agree on its valuation. Assets with more standardized, homogenous, and simple structures tend to be more fungible, thereby promoting liquidity. The pricing formula of more liquid assets generally is easy to calculate when it is based upon sound assumptions and publicly available inputs. Whether an asset is listed on an active and developed exchange can serve as a key indicator of an asset's price transparency and liquidity.

c. Central Bank Eligibility

Assets that a covered company can pledge at a central bank as collateral for intraday liquidity needs and overnight liquidity facilities in a jurisdiction and in a currency where the bank has access to the central bank generally tend to be liquid and, as such, are appropriate for consideration as HQLA. In the past, central banks have provided a backstop to the supply of banking system liquidity under conditions of severe stress. Central bank eligibility should, therefore, provide additional assurance that assets could be used in acute liquidity stress events without adversely affecting the broader financial system and economy. However, central bank eligibility is not itself sufficient to categorize an asset as HQLA; all of the proposed rule's requirements for HQLA would need to be met if central bank eligible assets are to qualify as HQLA.

3. *What, if any, other characteristics should be considered by the agencies in analyzing the liquidity of an asset?*

2. Qualifying Criteria for Categories of HQLA

The characteristics of HQLA discussed above are reflected in the proposed rule's qualifying criteria for HQLA. The criteria, set forth in section 20 of the proposed rule, are designed to identify assets that exhibit low risk and limited price volatility, are traded in high-volume, deep markets with transparent pricing, and that are eligible to be pledged at a central bank. Consistent with these characteristics and the BCBS LCR framework, the proposed rule would establish general criteria for all HQLA and specific requirements for each category of HQLA. For example, most of the assets in these categories would need to meet the proposed rule's definition of ''liquid and readily-marketable'' in order to be included in HQLA. Under the proposed rule, an asset would be liquid and readily-marketable if it is traded in an active secondary market with more than two committed market makers, a large number of committed non-market maker participants on both the buying and selling sides of transactions, timely and observable market prices, and high trading volumes. The ''liquid and readily-marketable'' requirement is meant to ensure that assets included in HQLA exhibit a level of liquidity that would allow a covered company to convert them into cash during times of stress and, therefore, to meet its obligations when other sources of funding may be reduced or unavailable. Timely and observable market prices make it likely that a buyer could be found and that a price could be obtained within a short period of time such that a covered company could convert the assets to cash, as needed.

As noted above, assets that are included in HQLA should not be issued by financial sector entities since they would then be correlated with covered companies (or wrong-way risk assets). In the proposed rule, financial sector entities are defined as regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or a consolidated subsidiary of any of the foregoing. HQLA also could not be issued by any company (or any of its consolidated subsidiaries) that an agency has determined should be treated the same for the purposes of this proposed rule as a regulated financial company, investment company, non-regulated fund, pension fund, or investment adviser, based on activities similar in scope, nature, or operations to those entities (identified company).

The term ''regulated financial company'' under the proposal would include bank holding companies and savings and loan holding companies (depository institution holding companies); nonbank financial companies supervised by the Board under Title I of the Dodd-Frank Act; depository institutions; foreign banks; credit unions; industrial loan companies, industrial banks, or other similar institutions described in section 2 of the Bank Holding Company Act; national banks, state member banks, or state nonmember banks that are not depository institutions; insurance companies; securities holding companies (as defined in section 618 of the Dodd-Frank Act);[20] broker-dealers or dealers registered with the SEC; futures commission merchants and swap dealers, each as defined in the Commodity Exchange Act;[21] or security-based swap dealers defined in section 3 of the Securities Exchange Act.[22] It would also include any designated financial market utility, as defined in section 803 of the Dodd-Frank Act.[23] The definition also includes foreign companies if they are supervised and regulated in a manner similar to the institutions listed above.[24]

In addition, a ''regulated financial company'' would include a company that is included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) Web site, provided that the top tier depository institution holding company is subject to the proposed rule (FR Y–6 companies).[25]

FR Y–6 companies are typically controlled by the filing depository institution holding company under the Bank Holding Company Act. Although many such companies are not consolidated on the financial statements of a depository institution holding company, the links between the

[20] 12 U.S.C. 1850a(a)(4).

[21] 7 U.S.C. 1a(28) and (49).

[22] 15 U.S.C. 78c(a)(71).

[23] 12 U.S.C. 5462(4).

[24] Under paragraph (8) of the proposed rule's definition of ''regulated financial company,'' the following would not be considered regulated financial companies: U.S. government-sponsored enterprises; small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*); entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; and central banks, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank.

[25] *See http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx.*

companies are sufficiently significant that the agencies believe it would be appropriate to exclude securities issued by FR Y–6 companies (and their consolidated subsidiaries) from HQLA, for the same policy reasons that other regulated financial companies' securities would be excluded from HQLA under the proposal. The organizational hierarchy chart produced by the NIC Web site reflects (as updates regularly occur) the FR Y–6 companies a depository institution holding company must report on the form. The agencies are proposing this method for identifying these companies in order to reduce burden associated with obtaining the FR Y–6 organizational charts for all depository institution holding companies subject to the proposed rule, because the charts are not uniformly available by electronic means.

Under the proposal, investment companies would include companies registered with the SEC under the Investment Company Act of 1940 [26] and investment advisers would include companies registered with the SEC as investment advisers under the Investment Advisers Act of 1940,[27] as well as the foreign equivalent of such companies. Non-regulated funds would include hedge funds or private equity funds whose investment advisers are required to file SEC Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), and any consolidated subsidiary of such fund, other than a small business investment company, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*). Pension funds would be defined as employee benefit plans as defined in ERISA and government pension plans,[28] as well as their foreign equivalents. Securities issued by the foregoing entities or their consolidated subsidiaries would be excluded from HQLA.

4. *What, if any, modifications should the agencies consider to the definition of ''regulated financial company''? What, if any, entities should be added to, or removed from, the definition and why? What operational difficulties may be involved in identifying a ''regulated financial company,'' including companies a depository institution holding company must report on the FR Y–6 organizational chart (or in identifying consolidated subsidiaries)? How should those operational difficulties be addressed? What alternatives for identifying companies reported on the FR Y–6 should be considered, and what difficulties may be associated with using the organizational hierarchy chart produced by the NIC Web site?*

5. *What, if any, modifications should the agencies consider to the definition of ''non-regulated funds''? Should hedge funds or private equity funds whose managers are not required to file Form PF be included in the definition? What operational or other difficulties may covered companies encounter in identifying ''non-regulated'' funds and their consolidated subsidiaries? What other definitions would generally capture hedge funds and private equity funds in an appropriate and clear manner? Provide detailed suggestions and justifications.*

6. *What, if any, modifications should the agencies consider to the definitions of ''investment company,'' ''pension fund,'' ''investment adviser,'' or ''identified company''? Should investment companies or investment advisers not required to register with the SEC be included in the respective definitions?*

7. *What risk or operational issues should the agencies consider regarding the definitions and the exclusion of securities issued by the companies described above from HQLA, as well as the higher outflow rates applied to such companies, as described below?*

8. *What additional factors or characteristics should the agencies consider with respect to identifying those companies whose securities should be excluded from HQLA and should be subject to the accompanying higher outflow rates for such companies, as discussed below?*

9. *How well does the proposed definition of ''liquid and readily-marketable'' meet the agencies' goal of identifying HQLA that could be converted into cash in order to meet a covered company's liquidity needs during times of stress? What other characteristics, if any, of a traded security and relevant markets should the agencies consider? What other approaches for capturing this liquidity characteristic should the agencies consider? Provide detailed description of and justifications for any alternative approaches.*

a. Level 1 Liquid Assets

Under the proposed rule, a covered company could include the full fair value of level 1 liquid assets in its HQLA amount. These assets have the highest potential to generate liquidity for a covered company during periods of severe liquidity stress and thus would be includable in a covered company's HQLA amount without limit. As discussed in further detail in this section, the proposed rule would include the following assets in level 1 liquid assets: (1) Federal Reserve Bank balances; (2) foreign withdrawable reserves; (3) securities issued or unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury; (4) liquid and readily-marketable securities issued or unconditionally guaranteed as to the timely payment of principal and interest by any other U.S. government agency (provided that its obligations are fully and explicitly guaranteed by the full faith and credit of the United States government); (5) certain liquid and readily marketable securities that are claims on, or claims guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank; and (6) certain debt securities issued by sovereign entities.

Reserve Bank Balances

Under the BCBS LCR framework, ''central bank reserves'' are included in HQLA. In the United States, Federal Reserve Banks are generally authorized under the Federal Reserve Act to maintain balances only for ''depository institutions'' and for other limited types of organizations.[29] Pursuant to the Federal Reserve Act, there are different kinds of balances that depository institutions may maintain at Federal Reserve Banks, and they are maintained in different kinds of Federal Reserve Bank accounts. Balances that depository institutions must maintain to satisfy a reserve balance requirement must be maintained in the depository institution's ''master account'' at a Federal Reserve Bank or, if the institution has designated a pass-through correspondent, in the correspondent's master account. A ''reserve balance requirement'' is the amount that a depository institution must maintain in an account at a Federal Reserve Bank in order to satisfy that portion of the institution's reserve requirement that is not met with vault cash. Balances in excess of those required to be maintained to satisfy a reserve balance requirement, known as ''excess balances,'' may be maintained in a master account or in an ''excess balance account.'' Finally, balances maintained for a specified period of time, known as ''term deposits,'' are

[26] 15 U.S.C. 80a–1 *et seq.*

[27] 15 U.S.C. 80b–1 *et seq.*

[28] *See* paragraph (7) of § __.3 of the proposed rule's definition of ''regulated financial company.''

[29] *See* 12 U.S.C. 342.

maintained in a term deposit account offered by the Federal Reserve Banks. The proposed rule therefore uses the term ''Reserve Bank balances'' as the relevant term to capture central bank reserves in the United States.

Under the proposed rule, all balances a depository institution maintains at a Federal Reserve Bank (other than balances that an institution maintains on behalf of another institution, such as balances it maintains on behalf of a respondent or on behalf of an excess balance account participant) would be considered level 1 liquid assets, except for certain term deposits as explained immediately below.

Consistent with the concept of ''central bank reserves'' in the BCBS LCR framework, the proposed rule includes in its definition of ''Reserve Bank balances'' only those term deposits offered and maintained pursuant to terms and conditions that (1) explicitly and contractually permit such term deposits to be withdrawn upon demand prior to the expiration of the term, or that (2) permit such term deposits to be pledged as collateral for term or automatically-renewing overnight advances from a Federal Reserve Bank. None of the term deposits offered under the Federal Reserve's Term Deposit Facility as currently configured would be included in ''Reserve Bank balances'' because all term deposits offered to date by the Federal Reserve Banks are not explicitly and contractually repayable on notice. Similarly, all term deposits offered to date may not serve as collateral against which the depository institutions can borrow from a Federal Reserve Bank on a term or automatically renewable basis. Federal Reserve term deposits that are not included in ''Reserve Bank balances'' and, therefore, would not be considered level 1 liquid assets under the proposed rule could be included in a covered company's inflows, if the terms of such deposits expire within 30 days of the calculation date.

Under the proposed rule, a covered company's reserve balance requirement would be subtracted from its level 1 liquid asset amount, because a depository institution generally satisfies its reserve requirement by maintaining vault cash or a balance in an account at a Federal Reserve Bank.[30]

Foreign Withdrawable Reserves

The agencies are proposing that reserves held by a covered company in a foreign central bank that are not subject to restrictions on use be included in level 1 liquid assets. Similar to Reserve Bank balances, foreign withdrawable reserves should be able to serve as a medium of exchange in the currency of the country where they are held.

United States Government Securities

The proposed rule would include in level 1 liquid assets securities issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S Department of the Treasury. Generally, these types of securities have exhibited high levels of liquidity even in times of extreme stress to the financial system, and typically are the securities that experience the most ''flight to quality'' when investors adjust their holdings. Level 1 liquid assets would also include securities issued by any other U.S. government agency whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government, provided that they are liquid and readily-marketable.

Certain Sovereign and Multilateral Organization Securities

The proposed rule would include in level 1 liquid assets securities that are a claim on, or a claim guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank, provided that such securities meet the following three requirements.

First, these securities must have been assigned a zero percent risk weight under the standardized approach for risk-weighted assets of the agencies' regulatory capital rules.[31] Generally, securities issued by sovereigns that are assigned a zero percent risk weight have shown resilient liquidity characteristics. Second, the proposed rule would require these securities to be liquid and readily-marketable, as discussed above. Third, these securities would be required to be issued by an entity whose obligations have a proven record as a reliable source of liquidity in the repurchase or sales markets during stressed market conditions. A covered company could demonstrate a historical record that meets this criterion through reference to historical market prices during times of general liquidity stress, such as the period of financial market stress experienced from 2007 to 2008. Covered companies should also look to other periods of systemic and idiosyncratic stress to see if the asset under consideration has proven to be a reliable source of liquidity. Fourth, these securities could not be an obligation of a regulated financial company, non-regulated fund, pension fund, investment adviser, or identified company or any consolidated subsidiary of such entities.

Certain Foreign Sovereign Debt Securities

Debt securities issued by a foreign sovereign entity that are not assigned a zero percent risk weight under the standardized approach for risk-weighted assets of the agencies' regulatory capital rules may serve as level 1 liquid assets if they are liquid and readily marketable, the sovereign entity issues such debt securities in its own currency, and a covered company holds the debt securities to meet its cash outflows in the jurisdiction of the sovereign entity, as calculated in the outflow section of the proposed rule. These assets would be appropriately included as level 1 liquid assets despite having a risk weight greater than zero because a sovereign often is able to meet obligations in its own currency through control of its monetary system, even during fiscal challenges.

10. *What, if any, alternative factors should be considered in determining the assets that qualify as level 1 liquid assets? What, if any, additional assets should qualify as level 1 liquid assets based on the characteristics for HQLA that the agencies discussed above? Provide detailed justification based on the liquidity characteristics of any such assets, including historical data and observations.*

11. *Are there any assets that would qualify as level 1 liquid assets under the proposed rule that should not qualify based on their liquidity characteristics? If so, which assets should not be included and why? Provide detailed justification based on the liquidity characteristics of an asset in question, including historical data and observations.*

b. Level 2A Liquid Assets

Under the proposed rule, level 2A liquid assets would include certain claims on, or claims guaranteed by a U.S. government sponsored enterprise (GSE)[32] and certain claims on, or claims guaranteed by, a sovereign entity or a multilateral development bank. Assets would be required to be liquid and

[30] *See* § __.21(b)(1) of the proposed rule.

[31] *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Federal Reserve), and 12 CFR part 324 (FDIC).

[32] GSEs include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, and the Federal Home Loan Bank System.

readily-marketable, as described above, to be considered level 2A liquid assets.

The agencies are aware that some securities issued and guaranteed by U.S. GSEs consistently trade in very large volumes and generally have been highly liquid, including during times of stress. However, the U.S. GSEs remain privately owned corporations, and their obligations do not have the explicit guarantee of the full faith and credit of the United States. The agencies have long held the view that obligations of U.S. GSEs should not be accorded the same treatment as obligations that carry the explicit guarantee of the U.S. government and under the agencies' regulatory capital rules, have currently and historically assigned a 20 percent risk weight to their obligations and guarantees, rather than the zero percent risk weight assigned to securities guaranteed by the full faith and credit of the United States. Consistent with the agencies' regulatory capital rules, the agencies are not assigning the most favorable regulatory treatment to U.S. GSEs' issuances and guarantees under the proposed rule and therefore are assigning them to the level 2A liquid asset category, so long as they are investment grade consistent with the OCC's investment regulation (12 CFR part 1) as of the calculation date. Additionally, consistent with the agencies' regulatory capital rules' higher risk weight for the preferred stock of U.S. GSEs, the agencies are proposing to exclude such preferred stock from HQLA.

Level 2A liquid assets also would include claims on, or claims guaranteed by a sovereign entity or a multilateral development bank that: (1) is not included in level 1 liquid assets; (2) is assigned no higher than a 20 percent risk weight under the standardized approach for risk-weighted assets of the agencies' regulatory capital rules; [33] (3) is issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and (4) is not an obligation of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing. A covered company could demonstrate that a claim on or claims guaranteed by a sovereign entity or a multilateral development bank that has issued obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions through reference to historical market prices during times of general liquidity stress.[34] Covered companies should look to multiple periods of systemic and idiosyncratic liquidity stress in compiling such records.

The proposed rule likely would not permit covered bonds and securities issued by public sector entities, such as a state, local authority, or other government subdivision below the level of a sovereign (including U.S. states and municipalities) to qualify as HQLA at this time. While these assets are assigned a 20 percent risk weight under the standardized approach for risk-weighted assets in the agencies' regulatory capital rules, the agencies believe that, at this time, these assets are not liquid and readily-marketable in U.S. markets and thus do not exhibit the liquidity characteristics necessary to be included in HQLA under this proposed rule. For example, securities issued by public sector entities generally have low average daily trading volumes. Covered bonds, in particular, exhibit significant risks regarding interconnectedness and wrong-way risk among companies in the financial sector such as regulated financial companies, investment companies, and non-regulated funds.

12. *What other assets, if any, should the agencies include in level 2A liquid assets? How should such assets be identified and what are the characteristics of those assets that would justify their inclusion in level 2A liquid assets?*

13. *Are there any assets that would qualify as level 2A liquid assets under the proposed rule that should not qualify based on their liquidity characteristics? If so, which assets and why? Provide a detailed justification based on the liquidity characteristics of the asset in question, including historical data and observations.*

14. *What alternative treatment, if any, should the agencies consider for obligations of U.S. GSEs and why? Provide justification and supporting data.*

c. Level 2B Liquid Assets

Under the proposed rule, level 2B liquid assets would include certain publicly traded corporate debt securities and publicly traded shares of common stock that are liquid and readily-marketable, as discussed above. The limitation of level 2B liquid assets to those that are publicly traded is meant to ensure a minimum level of liquidity, as privately traded assets are less liquid. Under the proposed rule, the definition of ''publicly traded'' would be consistent with the definition used in the agencies' regulatory capital rules and would identify securities traded on registered exchanges with liquid two-way markets.[35] A two-way market would be defined as market where there are 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 within one day and settled at that price within a relatively short time frame, conforming to trade custom. This definition is also consistent with the definition in the agencies' capital rules [36] and is designed to identify markets with transparent and readily available pricing, which, for the reasons discussed above, is fundamental to the liquidity of an asset.

Publicly Traded Corporate Debt Securities

Publicly traded corporate debt securities would be considered level 2B liquid assets under the proposed rule if they meet three requirements (in addition to being liquid and readily-marketable). First, the securities would be required to meet the definition of ''investment grade'' under 12 CFR part 1 as of a calculation date.[37] This standard would ensure that assets not meeting the required credit quality standard for bank investment would not be included in HQLA. The agencies believe that meeting this standard is indicative of lower risk and, therefore, higher liquidity for a corporate debt security. Second, the securities would be required to have been issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions. A covered company would be required to demonstrate this record of liquidity reliability and lower volatility during times of stress by showing that the market price of the publicly traded debt securities or equivalent securities of the issuer declined by no more than 20 percent or the market haircut demanded by counterparties to secured lending and secured funding transactions that were collateralized by such debt

[33] *See* 12 CFR part 3 (OCC), 12 CFR part 217 (Federal Reserve), and 12 CFR part 324 (FDIC).

[34] This would be demonstrated if the market price of the security or equivalent securities of the issuer declined by no more than 10 percent or the market haircut demanded by counterparties to secured funding or lending transactions that are collateralized by such security or equivalent securities of the issuer increased by no more than 10 percentage points during a 30 calendar-day period of significant stress.

[35] *See id.*

[36] *Id.*

[37] 12 CFR 1.2(d).

securities or equivalent securities of the issuer increased by no more than 20 percentage points during a 30 calendar-day period of significant stress. As discussed above, a covered company could demonstrate a historical record that meets this criterion through reference to historical market prices of the debt security during times of general liquidity stress.

Finally, for the reasons discussed above, the debt securities could not be obligations of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing.

Publicly Traded Shares of Common Stock

Under the proposed rule, publicly traded shares of common stock could be included in a covered company's level 2B liquid assets if the shares meet the five requirements set forth below (in addition to being liquid and readily-marketable). Because of general statutory prohibitions on holding equity investments for their own account,[38] depository institutions subject to the proposed rule would not be able to include common stock in their level 2B liquid assets (including common stock held pursuant to authority for debt previously contracted, as discussed further below). However, a depository institution could include in its consolidated level 2B liquid assets common stock permissibly held by a consolidated subsidiary, where the investments meet the proposed level 2B requirements for publicly traded shares of common stock. Furthermore, a depository institution could only include in its level 2B assets the amount of a consolidated subsidiary's publicly traded shares of common stock if it is held to cover the net cash outflows for the consolidated subsidiary. For example, if Subsidiary A holds level 2B publicly traded common stock of $100 in a legally permissible manner and has outflows of $80, Subsidiary A could not contribute more than $80 of its level 2B publicly traded common stock to its parent depository institution's consolidated level 2B assets.

Under the rule, to be considered a level 2B liquid asset, the publicly traded common stock would be required to be included in either: (1) the Standard & Poor's 500 Index (S&P 500); (2) if the stock is held in a non-U.S. jurisdiction to meet liquidity risks in that jurisdiction, an index that the covered company's supervisor in that jurisdiction recognizes for purposes of including the equities as level 2B liquid assets under applicable regulatory policy; or (3) any other index for which the covered company can demonstrate to the satisfaction of its primary federal supervisor that the stock is as liquid and readily-marketable as equities traded on the S&P 500.

The agencies believe that being included in a major stock index is an important indicator of the liquidity of a stock, because such stock tends to have higher trading volumes and lower bid-ask spreads during stressed market conditions than those that are not listed. The agencies identified the S&P 500 as being appropriate for this purpose given that it is considered a major index in the United States and generally includes the most liquid and actively traded stocks. Moreover, stocks that are included in the S&P 500 are selected by a committee that considers, among other characteristics, the volume of trading activity and length of time the stock has been publicly traded.

Second, to be considered a level 2B liquid asset, a covered company's publicly traded common stock would be required to be issued in: (1) U.S. dollars; or (2) the currency of a jurisdiction where the covered company operates and the stock offsets its net cash outflows in that jurisdiction. This requirement is meant to ensure that, upon liquidation of the stock, the currency received from the sale matches the outflow currency.

Third, the common stock would be required to have been issued by an entity whose common stock has a proven record as a reliable source of liquidity in the repurchase or sales markets during stressed market conditions. Under the proposed rule, a covered company would be required to demonstrate this record of reliable liquidity by showing that the market price of the common stock or equivalent securities of the issuer declined by no more than 40 percent or that the market haircut, as evidenced by observable market prices, of secured funding or lending transactions collateralized by such common stock or equivalent securities of the issuer increased by no more than 40 percentage points during a 30 calendar-day period of significant stress. This limitation is meant to account for the volatility inherent in equities, which is a risk to the preservation of liquidity value. As above, a covered company could demonstrate this historical record through reference to the historical market prices of the common stock during times of general liquidity stress.

Fourth, as with the other asset categories of HQLA and for the same reasons, common stock included in level 2B liquid assets may not be issued by a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or any consolidated subsidiary of the foregoing. During the recent financial crisis, the common stock of such companies experienced significant declines in value and the agencies believe that such declines indicate those assets would be less likely to provide substantial liquidity during future periods of stress and, therefore, are not appropriate for inclusion in a covered company's stock of HQLA.

Fifth, if held by a depository institution, the publicly traded common stock could not be acquired in satisfaction of a debt previously contracted (DPC). In general, publicly traded common stock may be acquired by a depository institution to prevent a loss from a DPC. However, in order for a depository institution to avail itself of the authority to hold DPC assets, such as by holding publicly traded common stock, such assets typically must be divested in a timely manner.[39] The agencies believe that depository institutions should make a good faith effort to dispose of DPC publicly traded common stock as soon as commercially reasonable, subject to the applicable legal time limits for disposition. The agencies are concerned that permitting depository institutions to include DPC publicly traded common stock in level 2B liquid assets may provide an inappropriate incentive for depository institutions to hold such assets beyond a commercially reasonable period for disposition. Therefore, the proposal would prohibit depository institutions from including DPC publicly traded common stock in level 2B liquid assets.

15. *What, if any, additional criteria should the agencies consider in determining the type of securities that should qualify as level 2B liquid assets? What alternatives to the S&P 500 should be considered in determining the liquidity of an equity security and why? In addition to an investment grade classification, what additional characteristics denote the liquidity quality of corporate debt that the agencies would be legally permitted to use in light of the Dodd-Frank Act prohibition against agencies' regulations referencing credit ratings? The agencies*

[38] 12 U.S.C. 24(Seventh) (national banks); 12 U.S.C. 1464(c) (federal savings associations); 12 U.S.C. 1831a (state banks); 12 U.S.C. 1831e (state savings associations).

[39] *See generally* 12 CFR 1.7 (OCC); 12 U.S.C. 1843(c)(2) (Board); 12 CFR 362.1(b)(3) (FDIC).

*solicit detailed comment, with supporting data, on the advantages and disadvantages of the proposed investment grade criteria as well as recommended alternatives.*

16. *Are there any assets that would qualify as level 2B liquid assets under the proposed rule that should not qualify based on their liquidity characteristics? If so, which assets and why? Provide a detailed justification based on the liquidity characteristics of the asset in question, including historical data and observations.*

17. *What other criteria, if any, should the agencies consider for establishing an adequate historical record during times of liquidity stress in order to meet the relevant criteria under the proposed rule? What operational burdens, if any, are associated with this requirement? What other standards, if any, should the agencies consider to achieve the same result?*

18. *Is the proposed treatment for publicly traded common stock appropriate? Why or why not? Are there circumstances under which a depository institution may permissibly hold publicly traded common stock that the agencies should not prohibit from being included in level 2B liquid assets? Please provide specific examples. Under what circumstances, if any, should DPC publicly traded common stock be included in a depository institution's level 2B liquid assets and why? What liquidity risks, if any, are introduced or mitigated if DPC publicly traded common stock are permitted in a depository institution's level 2B liquid assets?*

3. Operational Requirements for HQLA

Under the proposed rule, an asset that a covered company includes in its HQLA would need to meet the following operational requirements. These operational requirements are intended to better ensure that a covered company's HQLA can be liquidated in times of stress. Several of these requirements relate to the monetization of an asset, by which the agencies mean the receipt of funds from the outright sale of an asset or from the transfer of an asset pursuant to a repurchase agreement.

First, a covered company would be required to have the operational capability to monetize the HQLA. This capability would be demonstrated by: (1) implementing and maintaining appropriate procedures and systems to monetize the asset at any time in accordance with relevant standard settlement periods and procedures; and (2) periodically monetizing a sample of HQLA that reasonably reflects the composition of the covered company's total HQLA portfolio, including with respect to asset type, maturity, and counterparty characteristics. This requirement is designed to ensure a covered company's access to the market, the effectiveness of its processes for monetization, and the availability of the assets for monetization and to minimize the risk of negative signaling during a period of actual stress. The agencies would monitor the procedures, systems, and periodic sample liquidations through their supervisory process.

Second, a covered company would be required to implement policies that require all HQLA to be under the control of the management function of the covered company that is charged with managing liquidity risk. To do so, a covered company would be required either to segregate the assets from other assets, with the sole intent to use them as a source of liquidity or to demonstrate its ability to monetize the assets and have the resulting funds available to the risk management function, without conflicting with another business or risk management strategy. Thus, if an HQLA were being used to hedge a specific transaction, such as holding an asset to hedge a call option that the covered company had written, it could not be included in the HQLA amount because its sale would conflict with another business or risk management strategy. However, if HQLA were being used as a general macro hedge, such as interest rate risk of the covered company's portfolio, it could still be included in the HQLA amount. This requirement is intended to ensure that a central function of a covered company has the authority and capability to liquidate HQLA to meet its obligations in times of stress without exposing the covered company to risks associated with specific transactions and structures that had been hedged. There were instances at specific firms during the recent financial crisis where unencumbered assets of the firms were not available to meet liquidity demands because the firms' treasuries were restricted or did not have access to such assets.

Third, a covered company would be required to include in its total net cash outflow amount the amount of cash outflow that would result from the termination of any specific transaction hedging HQLA. The impact of the hedge would be required to be included in the outflow because if the covered company were to liquidate the asset, it would be required to close out the hedge to avoid creating a risk exposure. This requirement is not intended to apply to general macro hedges such as holding interest rate derivatives to adjust internal duration or interest rate risk measurements, but is intended to cover specific hedges that would become risk exposures if the asset were sold.

Fourth, a covered company would be required to implement and maintain policies and procedures that determine the composition of the assets in its HQLA amount on a daily basis by (1) identifying where its HQLA is held by legal entity, geographical location, currency, custodial or bank account, and other relevant identifying factors, (2) determining that the assets included in a covered company's HQLA amount continue to qualify as HQLA, (3) ensuring that the HQLA in the HQLA amount are appropriately diversified by asset type, counterparty, issuer, currency, borrowing capacity or other factors associated with the liquidity risk of the assets, and (4) ensuring that the amount and type of HQLA included in a covered company's HQLA amount that is held in foreign jurisdictions is appropriate with respect to the covered company's net cash outflows in foreign jurisdictions.

The agencies also recognize that significant international banking activity occurs through non-U.S. branches of legal entities organized in the United States and that a foreign branch's activities may give rise to the need to hold HQLA in the jurisdiction where it is located. While the agencies believe that holding HQLA in a geographic location where it is needed to meet liquidity needs such as those envisioned by the LCR is appropriate, they are concerned that other factors such as taxes, re-hypothecation rights, and legal and regulatory restrictions may encourage certain companies to hold a disproportionate amount of their HQLA in locations outside the United States where unforeseen impediments may prevent timely repatriation of liquidity during a crisis. Nonetheless, establishing quantitative limits on the amount of HQLA that can be held abroad and still count towards a U.S. domiciled legal entity's LCR requirement is complex and can be overly restrictive in some cases.

Therefore, the agencies are proposing to require a covered company to establish policies to ensure that HQLA maintained in locations is appropriate with respect to where the net cash outflows arise. By requiring that there be a correlation between the HQLA amount held outside of the United States and the net cash outflows attributable to non-U.S. operations, the agencies intend to increase the likelihood that HQLA is available to a covered company and to avoid

repatriation concerns from HQLA held in another jurisdiction.

The agencies note that assets that meet the criteria of HQLA and are held by a covered company as either ''available-for-sale'' or ''held-to-maturity'' can be included in HQLA, regardless of such designation.

19. *Are the proposed operational criteria sufficiently clear to determine whether an asset could be included in the pool of HQLA? Why or why not? If not, what requirements need clarification?*

20. *What costs or other burdens would be incurred as a result of the proposed operational requirements? What modifications should the agencies consider to mitigate such costs or burdens, while establishing appropriate operational criteria for HQLA to ensure its liquidity? Please provide detailed explanations and justifications.*

21. *Given that, absent the requirement that a covered company develop and maintain policies and procedures to ensure sufficient HQLA is held domestically, a covered company could theoretically hold its entire HQLA in a foreign branch located in a jurisdiction that could impede its use to support U.S. operations, should the proposed rule be supplemented with quantitative restrictions on the amount of HQLA that can be held in foreign branches and included in the liquidity coverage ratio calculation? If so, how should the rule require a correlation between the geographic location of a covered company's HQLA and the location of the outflows the HQLA is intended to cover?*

22. *The agencies seek comment on all aspects of the criteria for HQLA, including issues of domestic and international competitive equity, and the adequacy of the proposed HQLA criteria in meeting the agencies' goal of requiring a covered company to maintain a buffer of liquid assets sufficient to withstand a 30 calendar-day stress period.*

4. Generally Applicable Criteria for HQLA

Under the proposed rule, assets would be required to meet the following generally applicable criteria to be considered as HQLA.

a. Unencumbered

To be included in HQLA, an asset would be required to be unencumbered as defined under the proposed rule. First, the asset would be required to be free of legal, regulatory, contractual, or other restrictions on the ability of a covered company to monetize asset. The agencies believe that, as a general matter, HQLA should only include assets that could be converted easily into cash. Second, the asset could not be pledged, explicitly or implicitly, to secure or provide credit-enhancement to any transaction, except that the asset could be pledged to a central bank or a U.S. GSE to secure potential borrowings if credit secured by the asset has not been extended to the covered company or its consolidated subsidiaries. This exception is meant to account for the ability of central banks and U.S. GSEs to lend against the posted HQLA or to return the posted HQLA, in which case a covered company could *sell* or engage in a repurchase agreement with the assets to receive cash. This exception is also meant to permit collateral that is covered by a blanket lien from a U.S. GSE to be included in HQLA.

b. Client Pool Security

An asset included in HQLA could not be a client pool security held in a segregated account or cash received from a repurchase agreement on client pool securities held in a segregated account. The proposed rule defines a client pool security as one that is owned by a customer of a covered company and is not an asset of the organization, regardless of the organization's hypothecation rights to the security. Since client pool securities held in a segregated account are not freely available to meet all possible liquidity needs, they should not count as a source of liquidity.

c. Treatment of HQLA Held by U.S. Consolidated Subsidiaries

Under the proposal, HQLA held in a legal entity that is a U.S. consolidated subsidiary of a covered company would be included in HQLA subject to specific limitations depending on whether the subsidiary is subject to the proposed rule and is therefore required to calculate a liquidity coverage ratio under the proposed rule.

If the consolidated subsidiary is subject to a minimum liquidity coverage ratio under the proposed rule, then a covered company could include in its HQLA amount the HQLA held in the consolidated subsidiary in an amount up to the consolidated subsidiary's net cash outflows calculated to meet its liquidity coverage ratio requirement. The covered company could also include in its HQLA amount any additional amount of HQLA the monetized proceeds from which would be available for transfer to the covered company's top-tier parent entity during times of stress without statutory, regulatory, contractual, or supervisory restrictions. Regulatory restrictions would include, for example, sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223). Supervisory restrictions may include, but would not be limited to, enforcement actions, written agreements, supervisory directives or requests to a particular subsidiary that would directly or indirectly restrict the subsidiary's ability to transfer the HQLA to the parent covered company.

If the consolidated subsidiary is not subject to a minimum liquidity coverage ratio under section 10 of the proposed rule, a covered company could include in its HQLA amount the HQLA held in the consolidated subsidiary in an amount up to the net cash outflows of the consolidated subsidiary that are included in the covered company's calculation of its liquidity coverage ratio, plus any additional amount of HQLA held by the consolidated subsidiary the monetized proceeds from which would be available for transfer to the covered company's top tier parent entity during times of stress without statutory, regulatory, contractual, or supervisory restrictions. This treatment is consistent with the Basel III LCR and ensures that assets in the pool of HQLA can be freely monetized and the proceeds can be freely transferred to a covered company's top-tier parent entity in times of a liquidity stress.

d. Treatment of HQLA Held by Non-U.S. Consolidated Subsidiaries

Consistent with the BCBS liquidity framework, HQLA held by a non-U.S. legal entity that is a consolidated subsidiary of a covered company could be included in a covered company's HQLA in an amount up to the net cash outflows of the non-U.S. consolidated subsidiary that are included in the covered company's net cash outflows, plus any additional amount of HQLA held by the non-U.S. consolidated subsidiary that is available for transfer to the covered company's top-tier parent entity during times of stress without statutory, regulatory, contractual, or supervisory restrictions. The proposal would require covered companies with foreign operations to identify the location of HQLA and net cash outflows and exclude any HQLA above net cash outflows that is not freely available for transfer due to statutory, regulatory, contractual or supervisory restrictions. Such transfer restrictions would include liquidity coverage ratio requirements greater than those that would be established by the proposed rule, counterparty exposure limits, and any other regulatory, statutory, or supervisory limitations. While the

agencies believe it is appropriate for a covered company to hold HQLA in a particular geographic location in order to meet liquidity needs there, they do not believe it is appropriate for a covered company to hold a disproportionate amount of HQLA in locations outside the United States given that unforeseen impediments may prevent timely repatriation of liquidity during a crisis. Therefore, under section 20(f) of the proposal, a covered company would be generally expected to maintain in the United States an amount and type of HQLA that is sufficient to meet its total net cash outflow amount in the United States.

23. *What effects may the provision in section 20(f) that a covered company is generally expected to maintain HQLA in the United States sufficient to meet its total net cash outflow amount in the United States have on a company's management of HQLA? Should the agencies be concerned about the transferability of liquidity between national jurisdictions during a time of financial distress and, if so, would such a requirement be sufficient to allay these concerns? Would holding HQLA in a foreign jurisdiction in an amount beyond such jurisdiction's estimated outflow limit the operational capacity of HQLA to meet liquidity needs in the United States; conversely, would the proposed general requirement unnecessarily disrupt overall banking operations? What changes, if any, to section 20(f) should the agencies consider to ensure that a covered company has sufficient HQLA readily available to meet its outflows in the United States? Should the agencies consider quantitative limits to ensure that a covered company has sufficient HQLA readily available in the United States to meet its net outflows in the United States and support its operations during periods of stress? Why or why* not?

e. Exclusion of Rehypothecated Assets

Under the proposed rule, assets that a covered company received under a rehypothecation right where the beneficial owner has a contractual right to withdraw the asset without remuneration at any time during a 30 calendar-day stress period would not be included in HQLA under the proposed rule. This exclusion extends to assets generated from another asset that was received under such a rehypothecation right. If the beneficial owner has such a right and were to exercise it within a 30 calendar-day stress period, the asset would not be available to support the covered company's liquidity position.

f. Exclusion of Assets Designated as Operational

Assets included in a covered company's HQLA amount could not be specifically designated to cover operational costs. The agencies believe that assets specifically designated to cover costs such as wages or facility maintenance generally would not be available to cover liquidity needs that arise during stressed market conditions.

24. *The agencies seek comment on the proposed rule's description of an unencumbered asset. What, if any, additional criteria should be considered in determining whether an asset is unencumbered for purposes of consideration as HQLA?*

25. *What difficulties or lack of clarity, if any, may arise from the proposed operational requirement that HQLA not be a client pool security be held in a segregated account? What, if any, terms could the agencies consider to clarify what securities are captured in this provision? For example, what characteristics should be included to describe the types of accounts that should cause client pool securities to be excluded from HQLA treatment?*

26. *What, if any, modifications should the agencies consider to the treatment of HQLA held by consolidated U.S. subsidiaries and why?*

27. *The agencies solicit comment on the proposed method for including the HQLA held at non-U.S. consolidated subsidiaries in a covered company's HQLA. Is it appropriate to include in HQLA some amount of HQLA that is held in non-U.S. consolidated subsidiaries? If not, why not? Should the proposed rule be supplemented with quantitative restrictions on the amount of HQLA that can be held in foreign branches and subsidiaries for the liquidity coverage ratio calculation of the consolidated U.S. entity? If so, how should the rule require a correlation between the geographic locations of a covered company's HQLA and the location of the outflows the HQLA is intended to cover? What portion of HQLA held by non-U.S. consolidated subsidiaries is freely available for use in connection with a covered company's U.S. operations during times of stress? In determining the amount of HQLA held at a non-U.S. consolidated subsidiary that a covered company can include in its HQLA, should a covered company be required to take into account any net cash outflows arising in connection with transactions between a non-U.S. entity and another affiliate? What challenges, if any, of the proposed methodology are not addressed? Please suggest specific solutions.*

5. Calculation of the HQLA Amount

Instructions for calculating the HQLA amount, including the calculation of the required haircuts and asset caps that the agencies are proposing to apply to level 2 liquid assets, are set forth in section 21 of the proposed rule. For the purposes of calculating a covered company's HQLA amount, the value of level 1, level 2A, and level 2B liquid assets would be equal to the fair value of the assets as determined under U.S. Generally Accepted Accounting Principles (GAAP), multiplied by the appropriate haircut factor and taking in consideration the unwinding of certain transactions.

Consistent with the Basel III LCR, the proposed rule would apply a 15 percent haircut to level 2A liquid assets and a 50 percent haircut to level 2B liquid assets.[40] These haircuts are meant to recognize that level 2 liquid assets generally are less liquid, have larger haircuts in the repurchase markets, and have more volatile prices in the outright sales markets. Also consistent with the Basel III LCR, the proposed rule would cap the amount of level 2 liquid assets that could be included in the HQLA amount. Specifically, level 2 liquid assets could account for no more than 40 percent of the HQLA amount and level 2B liquid assets could account for no more than 15 percent of the HQLA amount. These caps are meant to ensure that these types of assets, which provide less liquidity as compared to level 1 liquid assets, comprise a smaller portion of a covered company's total HQLA amount such that the majority of the HQLA amount is comprised of level 1 liquid assets.

As discussed in more detail in section II.A.5.b of this preamble, the agencies believe the proposed level 2 caps and haircuts should be applied to a covered company's HQLA amount both before and after certain transactions are unwound, such as transactions where HQLA will be exchanged for HQLA within the next 30 calendar days in order to ensure that the HQLA portfolio is appropriately diversified. The calculation of adjusted HQLA would prevent a covered company from being able to manipulate its HQLA portfolio by engaging in transactions such as certain repurchase or reverse repurchase transactions because the HQLA amount, including the caps and haircuts, would be calculated both before and after unwinding those transactions. Formulas for calculating the HQLA amount are provided in section 21 of the proposed

[40] *See* Basel III Revised Liquidity Framework, paragraphs 46–54 and Annex 1, *supra* note 3; proposed rule § __.21(b).

rule. Under these provisions, the HQLA amount would be the sum of the three liquid asset category amounts after the application of appropriate haircuts, less the greater of the amount of HQLA that exceeds the level 2 caps on the first day of a calculation period (unadjusted excess HQLA amount) or the amount of HQLA that exceeds the level 2 caps at the end of a 30 calendar-day stress period after unwinding certain transactions (adjusted excess HQLA amount).

a. Calculation of Unadjusted Excess HQLA Amount

The unadjusted excess HQLA amount is the sum of the level 2 cap excess amount and the level 2B cap excess amount. The calculation of the unadjusted excess HQLA amount applies the 40 percent level 2 liquid asset cap and the 15 percent level 2B liquid asset cap at the start of a 30 calendar-day stressed period by subtracting the amount of level 2 liquid assets that are in excess of the limits. The unadjusted HQLA excess amount enforces the cap limits without unwinding any transactions.

The method of calculating the level 2 cap excess amount and level 2B cap excess amounts is set forth in sections 21(d) and (e) of the proposed rule, respectively. Under those provisions, the level 2 cap excess amount would be calculated by taking the greater of: (1) the level 2A liquid asset amount plus the level 2B liquid asset amount that exceeds 0.6667 (or 40/60, which is the ratio of the allowable level 2 liquid assets to the level 1 liquid assets) times the level 1 liquid asset amount; or (2) zero.[41] The calculation of the level 2B cap excess amount would be calculated by taking the greater of: (1) the level 2B liquid asset amount less the level 2 cap excess amount and less 0.1765 (or 15/85, which is the ratio of allowable level 2B liquid assets to the sum of level 1 and level 2A liquid assets) times the sum of the level 1 and level 2A liquid asset amount; or (2) zero.[42] Subtracting the level 2 cap excess amount from the level 2B liquid asset amount when applying the 15 percent level 2B cap is appropriate because the level 2B liquid assets should be excluded before the level 2A liquid assets when applying the 40 percent level 2 cap.

b. Calculation of Adjusted Excess HQLA Amount

To determine its adjusted HQLA excess amount, a covered company must unwind all secured funding transactions, secured lending transactions, asset exchanges, and collateralized derivatives transactions, each as defined by the proposed rule, that mature within a 30 calendar-day stress period where HQLA is exchanged. The unwinding of these transactions and the calculation of adjusted excess HQLA amount is intended to prevent a covered company from having a substantial amount of transactions that would create the appearance of a significant level 1 liquid asset amount at the beginning of a 30 calendar-day stress period, but that would unwind by the end of the 30 calendar-day stress period. For example, absent the unwinding of these transactions, a firm that has all level 2 liquid assets could appear compliant with the level 2 liquid asset cap on a calculation date by borrowing a level 1 liquid asset (such as cash or Treasuries) secured by a level 2 liquid asset overnight. While doing so would lower the covered company's amount of level 2 liquid assets and increase its amount of level 1 liquid assets, the organization would have a concentration of level 2 liquid assets above the 40 percent cap after the transaction is unwound. Therefore, the calculation of the adjusted excess HQLA amount and its subtraction from the HQLA amount, if greater than unadjusted excess HQLA amount, would prevent covered companies from avoiding the liquid asset cap limitations.

The adjusted level 1 liquid asset amount would be the fair value, as determined under GAAP, of the level 1 liquid assets that are held by a covered company upon the unwinding of any secured funding transaction, secured lending transaction, asset exchanges, or collateralized derivatives transaction that mature within a 30 calendar-day stress period and that involves an exchange of HQLA. Similarly, adjusted level 2A and adjusted level 2B liquid assets would only include those transactions involving an exchange HQLA. After unwinding all the appropriate transactions, the asset haircuts of 15 percent and 50 percent would be applied to the level 2A and 2B liquid assets, respectively.

The adjusted excess HQLA amount calculated pursuant to section 21(g) of the proposed rule would be comprised of the adjusted level 2 cap excess amount and adjusted level 2B cap excess amount calculated pursuant to sections 21(h) and 21(i) of the proposed rule, respectively. These excess amounts are calculated in order to maintain the 40 percent cap on level 2 liquid assets and the 15 percent cap on level 2B liquid assets after unwinding a covered company's secured funding transactions, secured lending transactions, asset exchanges, and collateralized derivatives transactions.

The adjusted level 2 cap excess amount would be calculated by taking the greater of: (1) the adjusted level 2A liquid asset amount plus the adjusted level 2B liquid asset amount minus 0.6667 (or 40/60, which is the ratio of the allowable level 2 liquid assets to level 1 liquid assets) times the adjusted level 1 liquid asset amount; or (2) zero.[43] The adjusted level 2B cap excess amount would be calculated by taking the greater of: (1) the adjusted 2B liquid asset amount less the adjusted level 2 cap excess amount less 0.1765 (or 15/85, which is the ratio of allowable level 2B liquid assets to the sum of level 1 liquid assets and level 2A liquid assets) times the sum of the adjusted level 1 liquid asset amount and the adjusted level 2A liquid asset amount; or (2) zero.[44] As noted above, the adjusted excess HQLA amount is the sum of the adjusted level 2 cap excess amount and the adjusted level 2B cap excess amount.[45] Also as noted above, subtracting out the adjusted level 2 cap excess amount from the adjusted level 2B liquid asset amount when applying the 15 percent level 2B cap is appropriate because the adjusted level 2B liquid assets should be excluded before the adjusted level 2A liquid assets when applying the 40 percent level 2 cap.

c. Example HQLA Calculation

The following is an example calculation of the HQLA amount that would be required under the proposed rule. Note that the given liquid asset amounts and adjusted liquid asset amounts already reflect the level 2A and 2B haircuts.

Level 1 liquid asset amount: 15
Level 2A liquid asset amount: 25
Level 2B liquid asset amount: 140
Adjusted level 1 liquid asset amount: 120
Adjusted level 2A liquid asset amount: 50
Adjusted level 2B liquid asset amount: 10

Calculate unadjusted excess HQLA amount (section 21(c))

Step 1: Calculate the level 2 cap excess amount (section 21(d)):

Level 2 cap excess amount = Max (level 2A liquid asset amount + level 2B liquid asset amount $-0.6667*$Level 1 liquid asset amount, 0)

= Max (25 + 140 − 0.6667*15, 0)

[41] *See* § __.21(d) of the proposed rule.

[42] *See* § __. 21(e) of the proposed rule.

[43] *See* § __.21(h) of the proposed rule.

[44] *See* § __.21(i) of the proposed rule.

[45] *See* § __.21(g) of the proposed rule.

= Max (165 − 10.00, 0)
= Max (155.00, 0)
= 155.00

Step 2: Calculate the level 2B cap excess amount (section 21(e)).

Level 2B cap excess amount = Max (level 2B liquid asset amount − level 2 cap excess amount − 0.1765*(level 1 liquid asset amount + level 2 liquid asset amount), 0)
= Max (140–155.00 − 0.1765*(15+25), 0)
= Max (−15 − 7.06, 0)
= Max (−22.06, 0)
= 0

Step 3: Calculate the unadjusted excess HQLA amount (section 21(c)).

Unadjusted excess HQLA amount = Level 2 cap excess amount + Level 2B cap excess amount
= 155.00 + 0
= 155

Calculate adjusted excess HQLA amount (sections 21(g))

Step 1: Calculate the adjusted level 2 cap excess amount (section 21(h)).

Adjusted level 2 cap excess amount = Max (adjusted level 2A liquid asset amount + adjusted level 2B liquid asset amount − 0.6667*adjusted level 1 liquid asset amount, 0)
= Max (50 + 10 − 0.6667*120, 0)
= Max (60 − 80.00, 0)
= Max (−20.00, 0)
= 0

Step 2: Calculate the adjusted level 2B cap excess amount (section 21(i)).

Adjusted level 2B cap excess amount = Max (adjusted level 2B liquid asset amount − adjusted level 2 cap excess amount − 0.1765*(adjusted level 1 liquid asset amount + adjusted level 2 liquid asset amount, 0)
= Max (10 − 0 − 0.1765*(120+50), 0)
= Max (10 − 30.00, 0)
= Max (−20.00, 0)
= 0

Step 3: Calculate the adjusted excess HQLA amount (section 21(g)).

Adjusted excess HQLA amount = adjusted level 2 cap excess amount + adjusted level 2B cap excess amount
= 0 + 0
= 0

Determine the HQLA amount (section 21(a))

HQLA = Level 1 liquid asset amount + level 2A liquid asset amount + level 2B liquid asset amount − Max(unadjusted excess HQLA amount, adjusted excess HQLA amount)
= 15 + 25 + 140 − Max (155, 0)
= 180 − 155
= 25

*B. Total Net Cash Outflow*

To determine the liquidity coverage ratio as of a calculation date, the proposed rule would require a covered company to calculate its total stressed net cash outflow amount for each of the 30 calendar days following the calculation date, thereby establishing the dollar value that must be offset by the HQLA amount.

Under section 30 of the proposed rule, the total net cash outflow amount would be the dollar amount on the day within a 30 calendar-day stress period that has the highest amount of net cumulative cash outflows. The agencies believe that using the largest daily calculation as the denominator of the liquidity coverage ratio (rather than using total cash outflows over a 30 calendar-day stress period, which is the method employed by the Basel III LCR) is necessary because it takes into account potential maturity mismatches between a covered company's outflows and inflows, that is, the risk that a covered company could have a substantial amount of contractual inflows late in a 30 calendar-day stress period while also having substantial outflows early in the same period. Such mismatches could threaten the liquidity of the organization. By requiring the recognition of the highest net cumulative outflow day of a particular 30 calendar-day stress period, the agencies believe that the proposed liquidity coverage ratio would better capture a covered company's liquidity risk and help foster more sound liquidity management.

To determine the denominator of the liquidity coverage ratio as of a calculation date, the proposed rule would require a covered company to calculate its total cumulative stressed net cash outflows occurring on each of the 30 calendar days following the calculation date. Under section 30 of the proposed rule, the total net cash outflow amount for each of the next 30 calendar days would be the sum of the cumulative stressed outflow amounts less the sum of the cumulative stressed inflow amounts, with cumulative stressed inflow amounts limited to 75 percent of cumulative stressed outflow amounts. Stressed outflow and inflow amounts would be calculated by multiplying an outflow or inflow rate (designed to reflect a stress scenario) to each category of outflows and inflows. The cumulative stressed outflow amount would be comprised of different groupings of outflow categories, including categories where the instruments and transactions do not have maturity dates [46] and categories where the instruments mature and transactions occur on or prior to a day 30 calendar days or less after the calculation date.[47] The cumulative stressed inflow amount, which would be deducted from the cumulative stressed outflow amount, would equal the lesser of (1) the sum of categories where the inflows are grouped together and categories where the instruments mature and transactions occur on or prior to that calendar day [48] and (2) 75 percent of the cumulative stressed outflow amount for that calendar day.[49] The largest of these total net cash outflow amounts calculated for each of the 30 calendar days after the calculation date would be equal to the amount of HQLA that a covered company would be required to hold under the proposed rule.

Consistent with the Basel III LCR and as noted above, in calculating total net cash outflow, cumulative cash inflows would be capped at 75 percent of aggregate cash outflows. This limit would prevent a covered company from relying exclusively on cash inflows (which may not materialize in a period of stress) to cover its liquidity needs under the proposal's stress scenario and ensure that covered companies maintain a minimum level of HQLA to meet unexpected liquidity demands during the 30 calendar-day period of liquidity stress.

Table 1 illustrates the determination of the total net cash outflow amount by applying the daily outflow and inflow calculations for a given 30 calendar-day stress period. Using Table 1, a covered company would, for each day, add (A) cash outflows as calculated under sections 32(a) through 32(g)(2) and cash outflows as calculated under sections 32(g)(3) through 32(l) for instruments and transactions that have no contractual maturity date and (C) cumulative cash outflows as calculated under sections 32(g)(3) through 32(l) for instruments or transactions that have a contractual maturity date up to and including the calculation date (the cumulative sum of amounts in column (B)) to arrive at (D) total cumulative cash outflows. Next, a covered company would subtract the lesser of (F) cumulative cash inflows as calculated under sections 33(b) through 33(f) where the instruments or transactions have a contractual maturity date up to and including the calculation date (the cumulative sum of amounts in column

[46] *See* § __.30(b) of the proposed rule.
[47] *See* § __.30(c) of the proposed rule.
[48] *See* § __.30(d)(1) of the proposed rule.
[49] *See* § __.30(d)(2) of the proposed rule.

(E)) or (G) 75 percent of (D) total cumulative cash outflows to determine (H) the net cumulative cash outflow. Based on the example provided below, the peak outflow would occur on Day 18, resulting in a total net cash outflow amount of 285.

TABLE 1—DETERMINATION OF PEAK NET CONTRACTUAL OUTFLOW DAY

| | Non-maturity cash outflows (constant) | Contractual cash outflows with maturity date up to and including the calculation date | Cumulative contractual cash outflows with maturity date up to and including the calculation date | Total cumulative cash outflows | Contractual cash inflows with maturity date up to and including the calculation date | Cumulative contractual cash inflows with maturity date up to and including the calculation date | Maximum inflows permitted due to 75% inflow cap | Net cumulative cash outflow |
|---|---|---|---|---|---|---|---|---|
| | A | B | C | D | E | F | G | H |
| Day 1 | 200 | 100 | 100 | 300 | 90 | 90 | 225 | 210 |
| Day 2 | 200 | 20 | 120 | 320 | 5 | 95 | 240 | 225 |
| Day 3 | 200 | 10 | 120 | 330 | 5 | 100 | 248 | 230 |
| Day 4 | 200 | 15 | 145 | 345 | 20 | 120 | 259 | 225 |
| Day 5 | 200 | 20 | 165 | 365 | 15 | 135 | 274 | 230 |
| Day 6 | 200 | 0 | 165 | 365 | 0 | 135 | 274 | 230 |
| Day 7 | 200 | 0 | 165 | 365 | 0 | 135 | 274 | 230 |
| Day 8 | 200 | 10 | 175 | 375 | 8 | 143 | 281 | 232 |
| Day 9 | 200 | 15 | 190 | 390 | 7 | 150 | 293 | 240 |
| Day 10 | 200 | 25 | 215 | 415 | 20 | 170 | 311 | 245 |
| Day 11 | 200 | 35 | 250 | 450 | 5 | 175 | 338 | 275 |
| Day 12 | 200 | 10 | 260 | 460 | 15 | 190 | 345 | 270 |
| Day 13 | 200 | 0 | 260 | 460 | 0 | 190 | 345 | 270 |
| Day 14 | 200 | 0 | 260 | 460 | 0 | 190 | 345 | 270 |
| Day 15 | 200 | 5 | 265 | 465 | 5 | 195 | 349 | 270 |
| Day 16 | 200 | 15 | 280 | 480 | 5 | 200 | 360 | 280 |
| Day 17 | 200 | 5 | 285 | 485 | 5 | 205 | 364 | 280 |
| Day 18 | 200 | 10 | 295 | 495 | 5 | 210 | 371 | 285 |
| Day 19 | 200 | 15 | 310 | 510 | 20 | 230 | 383 | 280 |
| Day 20 | 200 | 0 | 310 | 510 | 0 | 230 | 383 | 280 |
| Day 21 | 200 | 0 | 310 | 510 | 0 | 230 | 383 | 280 |
| Day 22 | 200 | 20 | 330 | 530 | 45 | 275 | 398 | 255 |
| Day 23 | 200 | 20 | 350 | 550 | 40 | 315 | 413 | 235 |
| Day 24 | 200 | 5 | 355 | 555 | 20 | 335 | 416 | 220 |
| Day 25 | 200 | 40 | 395 | 595 | 5 | 340 | 446 | 255 |
| Day 26 | 200 | 8 | 403 | 603 | 125 | 465 | 452 | 151 |
| Day 27 | 200 | 0 | 403 | 603 | 0 | 465 | 452 | 151 |
| Day 28 | 200 | 0 | 403 | 603 | 0 | 465 | 452 | 151 |
| Day 29 | 200 | 5 | 408 | 608 | 10 | 475 | 456 | 152 |
| Day 30 | 200 | 2 | 410 | 610 | 5 | 480 | 458 | 153 |

28. *Does the method the agencies are proposing for determining net cash outflows appropriately capture the potential mismatch between the timing of inflows and outflows under the 30 calendar-day stress period? Why or why not? Are there alternative methodologies for determining the net cumulative cash outflows that would more appropriately capture the maturity mismatch risk within 30 days about which the agencies are concerned? Provide specific suggestions and supporting data or other information.*

29. *What costs or other burdens would be incurred as a result of the proposed method for calculating net cash outflows? What modifications should the agencies consider to mitigate such costs or burdens, while establishing appropriate means to capture potential mismatches between the timing of inflows and outflows within a 30 calendar-day stress period?*

1. Determining the Maturity of Instruments and Transactions

Under the proposal, a covered company generally would be required to identify the maturity or transaction date that is the most conservative for an instrument or transaction in calculating inflows and outflows (that is, the earliest possible date for outflows and the latest possible date for inflows). In addition, under section 30 of the proposed rule, a covered company's total outflow amount as of a calculation date would include outflow amounts for certain instruments that do not have contractual maturity dates and that mature prior to or on a day 30 calendar days or less after the calculation date. Section 33 of the proposed rule would expressly exclude instruments with no maturity date from a covered company's total inflow amount.

Section 31 of the proposed rule describes how covered companies would determine whether instruments mature or transactions occur within the 30 calendar-day stress period for the purposes of calculating outflows and inflows. Section 31 would require covered companies to assess whether any options, either explicit or embedded, exist that would modify maturity dates such that they would fall within or beyond the 30 calendar-day stress period. If such an option exists for an outflow instrument or transaction, the proposed rule would direct a covered company to assume that the option would be exercised at the earliest possible date. If such an option exists for an inflow instrument or transaction, the proposed rule would require covered companies to assume that the option would be exercised at the latest possible date.

In addition, if an option to adjust the maturity date of an instrument is subject to a notice period, a covered company would be required to either disregard or take into account the notice period, depending upon whether the instrument was an outflow or inflow instrument, respectively.

30. *The agencies solicit commenters' views on the proposed treatment for maturing instruments and for determining the date of transactions. Specifically, what are commenters' views on the proposed provisions that would require covered companies to apply the most conservative treatment with the respect to inflow and outflow dates and embedded options?*

31. *What notice requirements, if any, should a covered company be able to recognize for counterparties that have options to accelerate the maturity of transactions and instruments included as outflows? Should a distinction be drawn between wholesale and retail customers or counterparties? Provide justification and supporting information.*

2. Cash Outflow Categories

Section 32 of the proposed rule sets forth the outflow categories for calculating cumulative cash outflows and their respective outflow rates, each as described below. The outflow rates are designed to reflect the 30 calendar-day stress scenario that is the basis for the proposed rule. Consistent with the Basel III LCR, the agencies are proposing to assign outflow rates for each category, ranging from 0 percent to 100 percent. These outflow rates would be multiplied by the outstanding balance of each category of funding to arrive at the applicable outflow amount.

a. Unsecured Retail Funding Outflow Amount

Under the proposed rule, unsecured retail funding would include retail deposits (other than brokered deposits), that are not secured under applicable law by a lien on specifically designated assets owned by the covered company and that are provided by a retail customer or counterparty. Unsecured retail funding would be divided into subcategories of stable retail deposits, other retail deposits, and funding from a retail customer or counterparty that is not a retail deposit or a brokered deposit provided by a retail customer or counterparty, each subject to the outflow rates set forth in section 32(a) of the proposed rule, as explained below.

Under the proposed rule, retail customers and counterparties would include individuals and certain small businesses. A small business would qualify as a retail customer or counterparty if its transactions have liquidity risks similar to those of individuals and are managed by a covered company in the same way as comparable transactions with individuals. In addition, to qualify as a small business under the proposed rule the total aggregate funding raised from the small business must be less than $1.5 million. If an entity provides $1.5 million or more in total funding, if it has liquidity risks that are not similar to individuals, or if the covered company manages the customer like corporate customers rather than individual customers, it would be a wholesale customer under the proposed rule. This treatment reflects the agencies' understanding that, during the recent financial crisis, small business customers generally behaved similarly to individual customers with respect to the stability of their deposits.

Supervisory data from stressed or failed institutions indicates that retail depositors withdrew term deposits at a similar rate to deposits without a contractual term. Therefore, the proposed rule would require covered companies to hold the same amount of HQLA to meet retail customer withdrawals in a stressed environment, regardless of whether the deposits have a contractual term. A retail deposit would thus be defined under the proposed rule as a demand or term deposit that is placed with a covered company by a retail customer or counterparty. This definition would not include wholesale brokered deposits or brokered deposits for retail customers or counterparties, which are covered in separate outflow categories.

i. Stable Retail Deposits

The proposed rule would define a stable retail deposit as a retail deposit, the entire amount of which is covered by deposit insurance,[50] and either (1) held in a transactional account by the depositor or (2) the depositor has another established relationship with a covered company, such that withdrawal of the deposit would be unlikely. Under the proposed rule, the established relationship could be another deposit account, a loan, bill payment services, or any other service or product provided to the depositor, provided that the banking organization demonstrates to the satisfaction of its primary Federal supervisor that the relationship would make deposit withdrawal highly unlikely during a liquidity stress event.

The agencies observe that in the recent financial crisis, retail customers and counterparties with deposit balances below the FDIC's standard maximum deposit insurance amount did not generally withdraw their deposits in such a way as to cause liquidity strains for banking organizations. However, the agencies do not believe the presence of deposit insurance alone is sufficient to consider a retail deposit stable because depositors with only one insured account are generally less stable than depositors with multiple accounts or relationships in a stress scenario. The combination of deposit insurance covering the entire amount of the deposit and the depositors' relationship with the bank, however, makes this category of retail deposits very unlikely to be subject to withdrawal in a stress scenario, due to confidence in FDIC deposit insurance and the inconvenience of moving transactional or multiple accounts. Historical experience has demonstrated that retail customers and counterparties have tended to avoid restructuring direct deposits, automatic payments, and similar banking products that are insured during a stress scenario because they generally have sufficient confidence that insured funds would not be lost in the event of a bank failure and the difficulty of such restructuring does not seem to be worthwhile when funds are insured.

Therefore, under the proposed rule, stable retail deposit balances would be multiplied by the relatively low outflow rate of 3 percent. Notwithstanding the above, the agencies note that a stressed environment could cause a surge in retail deposit inflows, as customers seek the safety of deposit insurance. Over several months or quarters, a surge in deposit inflows could distort a banking organization's liquidity coverage ratio calculation because these funds may not remain in the institution once market conditions and public confidence improves. A covered company's management should be cognizant of this potential distortion and consider appropriate steps to maintain adequate liquidity for the potential future withdrawals.

32. *What, if any, aggregate funding thresholds should the agencies consider for application to individuals, such as the $1.5 million aggregate funding threshold applicable to qualify as a small business under the proposed rule? Provide justification and supporting information.*

ii. Other Retail Deposits

Under the proposed rule, other retail deposits would include all deposits from retail customers that are not stable retail deposits as described above. Supervisory data supports a higher outflow rate for deposits that are partially insured in the United States as

[50] For purposes of the proposed rule, ''deposit insurance'' is defined to mean deposit insurance provided by the FDIC and does not include other deposit insurance schemes that may exist.

compared to entirely insured. During the recent financial crisis, to the extent that retail depositors whose deposits partially exceeded the FDIC's insurance limit withdrew deposits from a banking organization, they tended to withdraw not only the uninsured portion of the deposit, but the entire deposit. Furthermore, as discussed above, the agencies believe that insured retail deposits that are not either transactional account deposits or deposits of a customer with another relationship with the institution are less stable than those that are.

Accordingly, the agencies are proposing to assign an outflow rate of 10 percent for those retail deposits that are not entirely covered by deposit insurance, or that otherwise do not meet the proposed criteria for a stable retail deposit.

All other retail deposits would include retail deposits not insured by the FDIC, whether entirely insured, or insured by other jurisdictions. While the Basel III Liquidity Framework contemplates recognition of foreign deposit insurance, the agencies are proposing to recognize only FDIC deposit insurance in defining stable retail deposits because of the level of variability in terms of coverage and structure found in different foreign deposit insurance systems and because of the forthcoming potential revision of international best practices for deposit insurance. As discussed more fully below, the agencies are contemplating how best to identify and give comparable treatment to foreign deposit insurance systems that are similar to FDIC insurance once international best practices are further developed.

Congress created the FDIC in 1933 to end the banking crisis during the Great Depression, to restore public confidence in the banking system, and to safeguard bank deposits through deposit insurance. In the most recent crisis, the FDIC's deposit insurance guarantee contributed significantly to financial stability in an otherwise unstable financial environment. FDIC insurance has several characteristics that make it effective in stabilizing deposit outflows during liquidity stress events, including, but not limited to: capacity to make insured funds promptly available, usually the next business day after a bank closure; coverage levels sufficient to protect most retail depositors in full; an ex-ante funding mechanism; a rigorous prudential supervision process; timely intervention and resolution protocols; public awareness of deposit insurance; and backing by the full faith and credit of the U.S. government.

National adoption of deposit insurance systems has become prevalent since the 1980s, in part because of similar experiences to the Great Depression (for example, the Mexican peso crisis of the 1990s and the 1997 Asian financial crisis). Numerous international organizations have recognized the necessity of deposit insurance as part of a comprehensive financial stability framework, and there are now at least 112 recognized deposit insurers, with several more jurisdictions in the process of implementing deposit insurance.

Although many countries have implemented deposit insurance programs, deposit insurance around the globe is uneven along a number of dimensions, including terms of coverage, deposit insurer powers, financial resources, and public awareness. At one end of the deposit insurance system spectrum, some systems appear to be similar to the FDIC's insurance framework in terms of uniform coverage and back-up funding options. At the other end, a variety of less structured models exist, including private organizations with only implied or no sovereign support, sovereign guarantees with no deposit insurer, and minimal deposit insurance systems with limited powers.

The international regulatory community has recognized the variance in global deposit insurance as a significant issue. In 2002, the International Association of Deposit Insurers (IADI) was formed to promote best practices in deposit insurance and has developed core principles that are recognized by both the IMF and the World Bank. IADI recently announced that its core principles would be assessed and updated, as necessary, to reflect enhanced guidance, international regulatory developments, and the results of compliance assessment reviews conducted to date.[51]

The agencies considered whether foreign deposit insurance systems, particularly those with sovereign backing, should be given the same treatment as FDIC insurance in the proposed rule. While credible sovereign guarantees are useful in reassuring depositors of the safety of their principal balances, experience has proven that without established operational infrastructure or explicit funding arrangement, depositors may not be assured that their funds will be available in a reasonable timeframe. History has shown that if depositors believe that their funds will be unavailable for a protracted period, they may withdraw funds in large numbers to avoid the resulting hardship. The ability of foreign deposit insurers to make funds promptly available varies widely and is often in contrast to the FDIC's next-business-day standard.[52]

33. *The agencies solicit comments on the proposed rule's treatment of deposits that are insured in foreign jurisdictions, views on the stability of foreign-entity insured deposits in a stressed environment, and how to best determine if foreign deposit insurance system is similar to FDIC insurance.*

iii. Other Unsecured Retail Funding

The other unsecured retail funding category would apply an outflow rate of 100 percent to all funding provided by retail customers or counterparties that is not a retail deposit or a retail brokered deposit and that matures within 30 days. This is intended to capture all additional types of retail funding that are not otherwise categorized.

34. *The agencies solicit commenters' views on the proposed outflow rates associated with stable retail deposits (3 percent outflow), less-stable retail deposits (10 percent outflow), and other unsecured retail funding (100 percent outflow). What, if any, additional factors should be taken into consideration regarding the proposed outflow rates for these deposit types? Do the proposed outflow rates reflect industry experience? Why or why not? Please provide supporting data.*

35. *Is it appropriate to treat certain small business customers like retail customers? Why or why not? What additional criteria, if any, would serve as more appropriate indicators?*

36. *The agencies solicit comment on the outflow rate for the insured portion of those deposits that are in excess of deposit insurance limit. Specifically, should the insured portion of a deposit that exceeds $250,000 (e.g., the portion of deposit balances up to and including $250,000) receive a different outflow rate than the uninsured portion of the deposit? Why or why not? Please provide supporting data.*

b. Structured Transaction Outflow Amount

The proposed rule's structured transaction outflow amount would capture obligations and exposures associated with structured transactions

[51] Today, IADI consists of 70 members, 9 associates, and 12 partner organizations, and is considered to be the standard-setter for deposit insurance by the Financial Stability Board (FSB), the BCBS, the International Monetary Fund (IMF), and the World Bank.

[52] *See* Financial Stability Board, Thematic Review on Deposit Insurance Systems (February 8, 2012), available at *http://www.financialstabilityboard.org/publications/r_120208.pdf.*

sponsored by a covered company, without regard to whether the structured transaction vehicle that is the issuing entity is consolidated on the covered company's balance sheet. Under the proposed rule, the outflow amount for each of a covered company's structured transactions would be the greater of (1) 100 percent of the amount of all debt obligations of the issuing entity that mature 30 days or less from a calculation date and all commitments made by the issuing entity to purchase assets within 30 calendar days or less from the calculation date and (2) the maximum contractual amount of funding the covered company may be required to provide to the issuing entity 30 calendar days or less from such calculation date through a liquidity facility, a return or repurchase of assets from the issuing entity, or other funding agreement.

The agencies believe that the maximum potential amount that a covered company may be required to provide to support its sponsored structured transactions, including potential obligations arising out of commitments to an issuing entity, that arise from structured finance transactions should be fully included in outflows when calculating the proposed liquidity coverage ratio because such transactions, whether issued directly or sponsored by covered companies, have caused severe liquidity demands at covered companies during stressed environments. Their inclusion is important to measuring a covered company's short-term susceptibility to unexpected funding requirements.

37. *What, if any modifications to the structured transaction outflows should the agencies consider? In particular, what, if any, modifications to the definition of structured transaction should be considered? Please provide justifications and supporting data.*

c. Net Derivative Cash Outflow Amount

Under the proposed rule, a covered company's net derivative cash outflow amount would equal the sum of the payments and collateral that a covered company will make or deliver to each counterparty under derivative transactions, less, if subject to a valid qualifying master netting agreement,[53] the sum of payments and collateral due from each counterparty. This calculation would incorporate the amounts due to and from counterparties under the applicable transactions within 30 calendar days of a calculation date. Netting would be permissible at the highest level permitted by a covered company's contracts with its counterparties and could not include inflows where a covered company is already including assets in its HQLA that the counterparty has posted to support those inflows. If the derivative transactions are not subject to a valid qualifying master netting agreement, then the derivative cash outflow 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. Net derivative cash outflow should be calculated in accordance with existing valuation methodologies and expected contractual derivatives cash flows. In the event that net derivative cash outflow for a particular counterparty is less than zero, such amount would be required to be included in a covered company's net derivative cash inflow for that counterparty.

Under the proposed rule, a covered company's net derivative cash outflow amount would not include amounts arising in connection with forward sales of mortgage loans or any derivatives that are mortgage commitments subject to section 32(d) of the proposed rule. Net derivative cash outflow would still include derivatives that hedge interest rate risk associated with a mortgage pipeline.

This category is important to the proposed rule's liquidity coverage ratio in that many covered companies actively use derivatives across their business lines. In a short-term stressed situation, the amount of potential cash outflow associated with derivatives positions can change as positions are adjusted for market conditions and as counterparties demand additional collateral or more conservative contract terms.

38. *What, if any, additional factors or aspects of derivatives transactions should be considered for the treatment of derivatives contracts under the proposed rule?*

39. *Is it appropriate to exclude forward sales of mortgage loans from the treatment of derivatives contracts under the proposed rule? Why or why not?*

d. Mortgage Commitment Outflow Amount

During the recent financial crisis, it was evident that financial institutions were not able to curtail mortgage loan pipelines and had difficulty liquidating loans held for sale. Accordingly, the proposed rule would require a covered company to recognize potential cash outflows related to commitments to fund retail mortgage loans that could be drawn upon within 30 days of a calculation date. Under the proposal, a retail mortgage would be a mortgage that is primarily secured by a first or subsequent lien on a one-to-four family property.

The proposed rule would require a covered company to use an outflow rate of 10 percent for all retail mortgage commitments that can be drawn upon within a 30 calendar-day stress period. In addition, the proposed rule would not include in inflows proceeds from the potential sale of mortgages in the to-be-announced, specified pool, or similar forward sales market.[54] The agencies believe that, in a crisis, such inflows may not materialize as investors may curtail most or all of their investment in the mortgage market.

40. *What, if any, modifications should the agencies make to the mortgage commitment outflow amount? Provide data and other supporting information.*

41. *What effect may the treatment for retail mortgage funding under the proposed rule have on the banking system and the mortgage markets, including in combination with the effects of other regulations that apply to the mortgage market? What other treatments, if any, should the agencies consider? Provide data and other supporting information.*

e. Commitment Outflow Amount

This category would include the undrawn portion of committed credit and liquidity facilities provided by a covered company to its customers and counterparties that can be drawn down within 30 days of the calculation date. A liquidity facility would be defined under the proposed rule as a legally binding agreement to extend funds at a future date to a counterparty that is made expressly for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. A liquidity facility would include an agreement to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program, or conduit in

[53] Under the proposal, a ''qualifying master netting agreement'' would be defined as under the agencies' regulatory capital rules as a legally binding agreement that gives the covered company contractual rights to terminate, accelerate, and close out transactions upon the event of default and liquidate collateral or use it to set off its obligation. The agreement also could not be subject to a stay under bankruptcy or similar proceeding and the covered company would be required to meet certain operational requirements with respect to the agreement, as set forth in section 4 of the proposed rule.

[54] *See* § __.33(a) of the proposed rule.

the event that funds are required to repay maturing asset-backed commercial paper. Liquidity facilities would exclude general working capital facilities, such as revolving credit facilities for general corporate or working capital purposes.

A credit facility would be defined as a legally binding agreement to extend funds if requested at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes. Under the proposed rule, a credit facility would not include a facility extended expressly for the purpose of refinancing the debt of a counterparty that is otherwise unable to meet its obligations in the ordinary course of business. Facilities that have aspects of both credit and liquidity facilities would be classified as liquidity facilities for the purposes of the proposed rule.

Under the proposed rule, a liquidity or credit facility would be considered committed when the terms governing the facility prohibit a covered company from refusing to extend credit or funding under the facility, except where certain conditions specified by the terms of the facility—other than customary notice, administrative conditions, or changes in financial condition of the borrower—have been met. The undrawn amount for a committed credit or liquidity facility would be the entire undrawn amount of the facility that could be drawn upon within 30 calendar days of the calculation date under the governing agreement, less the fair value of level 1 or level 2A liquid assets, if any, which secure the facility, after recognizing the applicable haircut for the assets serving as collateral. In the case of a liquidity facility, the undrawn amount would not include the portion of the facility that supports customer obligations that do not mature 30 calendar days or less after the calculation date. A covered company's proportionate ownership share of a syndicated credit facility also would be included in the appropriate category of wholesale credit commitments.

The proposed rule would assign the outflow amounts to commitments as set forth in section 32(e) of the proposed rule. First, in contrast to the outflow rates applied to other commitments, those between affiliated depository institutions subject to the proposed rule would receive an outflow rate of 0 percent because the agencies recognize that both institutions should have adequate liquidity to meet their obligations during a stress scenario and therefore should not rely extensively on such liquidity facilities. The other outflow rates are meant to reflect the characteristics of each class of customers and counterparties in a stress scenario, as well as the reputational and legal risks covered companies face if they try to restructure a commitment during a crisis to avoid drawdowns by customers. Accordingly, a relatively low outflow rate of 5 percent is proposed for retail facilities because individuals and small businesses would likely have a lesser need for committed credit facilities in stressed scenarios than institutional or wholesale customers (that is, the correlation between draws on such facilities and the stress scenario of the liquidity coverage ratio is low). The agencies are proposing to assign outflow rates of 10 percent for credit facilities and 30 percent for liquidity facilities committed to entities that are not financial sector companies whose securities are excluded from HQLA [55] based on their typically longer-term funding structures and perceived higher credit quality profile in the capital markets, particularly during times of financial stress. The proposed rule would assign a 50 percent outflow rate to credit and liquidity facilities committed to depository institutions, depository institution holding companies, and foreign banks (other than commitments between affiliated depository institutions). Commitments to all other regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or identified companies (or to a consolidated subsidiary of any of the foregoing) would be subject to a 40 percent outflow rate for credit facilities and 100 percent for liquidity facilities.

The agencies are generally proposing higher outflow rates for liquidity facilities than credit facilities as described above because the crisis scenario that is incorporated into the proposed rule focuses on liquidity pressures increasing the likelihood of large draws on liquidity lines as compared to credit lines, which typically are used more during the normal course of business and not as substantially during a liquidity stress. The lower liquidity commitment outflow rate for depository institutions, depository institution holding companies, and foreign banks compared to other financial sector entities, is reflective of historical experience, which indicates these entities drew on liquidity lines less than other financial sector entities did during periods of liquidity stress. The higher outflow rate for commitments to other types of companies in the financial sector reflects their likely high need to use every available liquidity source during a liquidity crisis in order to meet their obligations and the fact that these entities are less likely to be able to immediately access government liquidity sources.

The agencies are proposing a 100 percent outflow rate for a covered company's liquidity facilities with special purpose entities (SPEs), given SPEs' sensitivity to emergency cash and backstop needs in a short-term stress environment, such as those experienced with SPEs during the recent financial crisis. During that period, many SPEs experienced severe cash shortfalls, as they could not rollover debt and had to rely on borrowing and backstop lines.

Under the proposed rule, the amount of level 1 or level 2A liquid assets securing the undrawn portion of a commitment would reduce the outflow associated with the commitment if certain conditions are met. The amount of level 1 or level 2A liquid assets securing a committed credit or liquidity facility would be the fair value (as determined under GAAP) of all level 1 liquid assets and 85 percent of the fair value of level 2A liquid assets posted or required to be posted upon funding of the commitment as collateral to secure the facility, provided that the following conditions are met during the applicable 30 calendar-day period: (1) the pledged assets meet the criteria for HQLA as set forth in section 20 of the proposed rule; and (2) the covered company has not included the assets in its HQLA amount as calculated under subpart C of the proposed rule.

42. *What, if any, additional factors should be considered in determining the treatment of unfunded commitments under the proposal? What, if any, additional distinctions between different types of unfunded commitments should the agencies consider? If necessary, how might the definitions of credit facility and liquidity facility be further clarified or distinguished? Are the various proposed treatments for unfunded commitments consistent with industry experience? Provide detailed explanations and supporting information.*

43. *Is the proposed rule's definition of SPE appropriate, under-inclusive, or over-inclusive? Why?*

Consistent with the BCBS LCR, specified run-off rates are not provided for credit card lines, since they are

[55] *See* section II.A.2. These financial sector companies are regulated financial companies, investment companies, non-regulated funds, pension funds, investment adviser, or identified companies, and consolidated subsidiaries of the foregoing, as defined in the proposal.

typically unconditionally cancelable and therefore do not meet the proposed definition of a committed facility. The agencies believe that during a financial crisis, draws on credit card lines would remain relatively constant and predictable; thus, outstanding lines should not materially affect a covered company's liquidity demands in a crisis. Accordingly, undrawn retail credit card lines are not included in cash outflows in the proposed rule. However, for a few banking organizations, these lines are significant relative to their balance sheet and these banking organizations may experience reputational or other risks if lines are withdrawn or significantly reduced during a crisis.

44. *What, if any, outflow rate should the agencies apply to outstanding credit card lines? What factors associated with these lines should the agencies consider?*

f. Collateral Outflow Amount

The proposed rule would require a covered company to recognize outflows related to changes in collateral positions that could arise during a period of financial stress. Such changes could include posting additional or higher quality collateral, returning excess collateral, accepting lower quality collateral as a substitute for already-posted collateral, or changing collateral value, all of which could have a significant impact upon a covered company's liquidity profile. The following discussion describes the subcategories of collateral outflow addressed by the proposed rule.

Changes in Financial Condition

Certain contractual clauses in derivatives and other transaction documents, such as material adverse change clauses and downgrade triggers, are aimed at capturing changes in a covered company's financial condition and, if triggered, would require a covered company to post more collateral or accelerate demand features in certain obligations that require collateral. During the recent financial crisis, various companies that would be subject to the proposed rule came under severe liquidity stress as the result of contractual requirements to post collateral following a credit rating downgrade.

Accordingly, the proposed rule would require a covered company to count as an outflow 100 percent of all additional amounts that the covered company would need to post or fund as additional collateral under a contract as a result of a change in its financial condition. A covered company would calculate this outflow amount by evaluating the terms of such contracts and calculating any incremental additional collateral or higher quality collateral that would need to be posted as a result of the triggering of clauses tied to a ratings downgrade or similar event, or change in the covered company's financial condition. If multiple methods of meeting the requirement for additional collateral are available (*i.e.,* providing more collateral of the same type or replacing existing collateral with higher quality collateral) the banks may use the lower calculated outflow amount in its calculation.

45. *What are the operational difficulties in identifying the collateral outflows related to changes in financial condition? What, if any, additional factors should be considered?*

Potential Valuation Changes

The proposed rule would apply a 20 percent outflow rate to the fair value of any assets posted as collateral that are not level 1 liquid assets to recognize that a covered company likely would be required to post additional collateral if market prices fell. The agencies are not proposing to apply outflow rates to level 1 liquid assets that are posted as collateral, as they are not expected to face mark-to-market losses in times of stress.

Excess Collateral

The agencies believe that a covered company's counterparty would not maintain any more collateral at the covered company than is required. Therefore, the proposed rule would apply an outflow rate of 100 percent on the fair value of the collateral posted by counterparties that exceeds the current collateral requirement in a governing contract. Under the proposed rule, this category would include unsegregated excess collateral that a covered company may be required to return to a counterparty based on the terms of a derivative or other financial agreement and which is not already excluded from the covered company's HQLA amount.

Contractually-Required Collateral

The proposed rule would require that 100 percent of the fair value of collateral that a covered company is contractually obligated to post, but has not yet posted, be included in the cash outflows calculation. Where a covered company has not yet posted such collateral, the agencies believe that, in stressed market conditions, a covered company's counterparties would likely demand all contractually required collateral.

Collateral Substitution

The proposed rule's collateral substitution outflow amount would be the differential between the post-haircut fair value of HQLA collateral posted by a counterparty and the lower quality HQLA or non-HQLA with which it could be substituted under an applicable contract. This outflow category assumes that, in a stress scenario, a covered company's counterparty would post the lowest quality collateral permissible under the governing contract. For example, an agreement could require a minimum of level 2A liquid assets as collateral, but allow a customer to pledge level 1 or level 2A liquid assets as collateral to meet such requirement. If a covered company is currently holding a level 1 liquid asset as collateral, the proposed rule would impose an outflow rate of 15 percent, which results from discounting the equivalent market value of the level 2A liquid asset. For a level 2B liquid asset, the amount of the market value included as an outflow would be 50 percent, which is equal to the market value of the level 2B liquid asset discounted by 50 percent. If the minimum required collateral under an agreement is comprised of assets that are not HQLA, a covered company currently holding level 1 assets would be required to include 100 percent of such assets' market value. The proposed rule provides outflow rates for each possible permutation.

Derivative Collateral Change

The proposed rule would require a covered company to use a two-year look-back approach in calculating its market valuation change outflow amounts for collateral securing its derivative positions. This approach is intended to capture the risk of a covered company facing additional collateral calls as a result of asset price fluctuations. The risk of such fluctuations can be particularly acute for a covered company with significant derivative operations and other business lines that rely on collateral postings.

Under the proposed rule, the derivative collateral amount would equal the absolute value of the largest consecutive 30 calendar-day cumulative net mark-to-market collateral outflow or inflow resulting from derivative transactions realized during the preceding 24 months.

46. *What, if any, additional factors or aspects for collateral outflow amounts should be considered under the proposal? For example, should the outflow include initial margin collateral flows in addition to variation margin*

*collateral flows? Why or why not? Does the 24 month look back approach adequately capture mark to market valuation changes, or are there alternative treatments that would better capture this risk?*

g. Brokered Deposit Outflow Amount for Retail Customers or Counterparties

Under the proposed rule, a brokered deposit would be defined as any deposit held at the covered company that is obtained directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the Federal Deposit Insurance Act.[56] The agencies consider brokered deposits for retail customers or counterparties to be a more volatile form of funding than stable retail deposits, even if deposit insurance coverage is present, because of the structure of the attendant third-party relationship and the potential instability of such deposits during a liquidity stress event. The agencies are also concerned that statutory restrictions on certain brokered deposits make this form of funding less stable than other deposit types. Specifically, a covered company that is not ''well capitalized'' or becomes less than ''well capitalized'' [57] is subject to prohibitions on accepting funds obtained through a deposit broker. In addition, because the retention of brokered deposits from retail customers or counterparties is highly correlated with a covered company's ability to legally accept such brokered deposits and continue offering competitive interest rates, the agencies are proposing higher outflow rates for this class of liabilities. The agencies are proposing to assign outflow rates to brokered deposits for retail customers or counterparties based on the type of account, whether deposit insurance is in place, and the maturity date of the deposit agreement. Outflow rates for retail brokered deposits would be further subdivided into reciprocal brokered deposits, brokered sweep deposits, and all other brokered deposits.

A reciprocal brokered deposit is defined in the proposed rule as a brokered deposit that a covered company receives through a deposit placement network on a reciprocal basis such that for any deposit received, the covered company (as agent for the depositor) places the same amount with other depository institutions through the network and each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Reciprocal brokered deposits generally have been observed to be more stable than typical brokered deposits because each institution within the deposit placement network typically has an established relationship with the retail customer or counterparty making the initial over-the-insurance-limit deposit that necessitates placing the deposit through the network. The proposed rule would therefore apply a 10 percent outflow rate to all reciprocal brokered deposits at a covered company that are entirely covered by deposit insurance. Reciprocal brokered deposits would receive an outflow rate of 25 percent if less than the entire amount of the deposit is covered by deposit insurance.

Brokered sweep deposits involve securities firms or investment companies that ''sweep'' or transfer idle customer funds into deposit accounts at one or more banks. Accordingly, such deposits are defined under the proposed rule as those that are held at the covered company by a customer or counterparty through a contractual feature that automatically transfers to the covered company from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred. The proposed rule would assign brokered sweep deposits progressively higher outflow rates depending on deposit insurance coverage and the affiliation of the broker sweeping the deposits. Under the proposed rule, brokered sweep deposits that are entirely covered by deposit insurance and that are deposited in accordance with a contract between a retail customer or counterparty and a covered company, a covered company's consolidated subsidiary, or a company that is a consolidated subsidiary of the same top tier company would be subject to a 10 percent outflow rate. Brokered sweep deposits that are entirely covered by deposit insurance but that do not originate with a covered company, a covered company's consolidated subsidiary, or a company that is a consolidated subsidiary of the same top tier company of a covered company would be assigned a 25 percent outflow rate. Brokered sweep deposits that are not entirely covered by deposit insurance would be subject to a 40 percent outflow rate because they have been observed to be more volatile during stressful periods, as customers seek alternative investment vehicles or use those funds for other purposes.

Under the proposed rule, all other brokered deposits would include those brokered deposits that are not reciprocal deposits or are not part of a brokered sweep arrangement. These accounts would be subject to an outflow rate of 10 percent if they mature later than 30 calendar days from a calculation date or 100 percent if they mature 30 calendar days or less from a calculation date.

47. *The agencies seek commenters' views on the proposed outflow rates for brokered deposits. Specifically, what are commenters' views on the range of outflow rates to brokered deposits? Where commenters disagree with the proposed treatment, please provide alternative proposals supported by sound analysis as well as the associated advantages and disadvantages for such alternative proposals.*

48. *Is it appropriate to assign a particular outflow rate to brokered sweep deposits entirely covered by deposit insurance that originate with a consolidated subsidiary of a covered company, and different outflow rates to other brokered deposits entirely covered by deposit insurance? Why or why not? What different outflow rates, if any should the agencies consider for application to all brokered sweep deposits entirely covered by deposit insurance? Provide justification and supporting information.*

h. Unsecured Wholesale Funding Outflow Amount

The proposed rule includes three general categories of unsecured wholesale funding: (1) unsecured wholesale funding transactions; (2) operational deposits; and (3) other unsecured wholesale funding. Funding instruments within these categories are not secured under applicable law by a lien on specifically designated assets. The proposed rule would assign a range of outflow rates depending upon whether deposit insurance is covering the funding, the counterparty, and other characteristics that cause these instruments to be more or less stable when compared to other instruments in this category. Unsecured wholesale funding instruments typically would include wholesale deposits,[58] federal funds purchased, unsecured advances from a public sector entity, sovereign entity, or U.S. government enterprise, unsecured notes and bonds, or other unsecured debt securities issued by a covered company (unless sold exclusively in retail markets to retail customers or counterparties), brokered

[56] 12 U.S.C. 1831f(g).

[57] As defined by section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o.

[58] Certain small business deposits are included within unsecured retail funding. *See* section II.B.2.a.i *supra.*

deposits from non-retail customers and any other transactions where an on-balance sheet unsecured credit obligation has been contracted.

The agencies are proposing to assign three separate outflow rates to unsecured wholesale funding that is not an operational deposit. These outflow rates are meant to address the stability of these obligations based on deposit insurance and the nature of the counterparty. Unsecured wholesale funding that is provided by an entity that is not a financial sector company whose securities are excluded from HQLA, as described above,[59] generally would be subject to an outflow rate of 20 percent where the entire amount is covered by deposit insurance, whereas deposits that are less than fully covered by deposit insurance or the funding is a brokered deposit would have a 40 percent outflow rate. However, the proposed rule would require that all other unsecured wholesale funding, including that provided by a consolidated subsidiary or affiliate of a covered company, be subject to an outflow rate of 100 percent. This higher outflow rate is associated with the elevated refinancing or roll-over risk in a stressed situation and the interconnectedness of financial institutions.

Some covered companies provide services, such as those related to clearing, custody, and cash management services, that require their customers to maintain certain deposit balances with them. These services are defined in the proposed rule as operational services, and the corresponding deposits, which are termed ''operational deposits,'' can be a key component of unsecured wholesale funding for certain covered companies. The proposed rule would define an operational deposit as wholesale funding that is required for a covered company to provide operational services, as defined by the proposed rule, as an independent third-party intermediary to the wholesale customer or counterparty providing the unsecured wholesale funding.

In developing the proposed outflow rates for these assets, the agencies contemplated the nature of operational deposits, their deposit insurance coverage, the customers' rights under their deposit agreements, and the economic incentives associated with customers' accounts. The agencies expect operational deposits to have a lower impact on a covered company's liquidity in a stressed environment because these accounts have significant legal or operational limitations that make significant withdrawals within 30 calendar days unlikely. For example, an entity that relies on a covered company for payroll processing services is not likely to move that operation to another covered company during a liquidity stress because it needs stability in providing payroll, regardless of stresses in the broader financial markets.

Under the proposed rule, operational deposits (other than escrow accounts) that meet the criteria in section 4(b) would be assigned a 5 percent outflow rate where the entire deposit amount is fully covered by deposit insurance. All other operational deposits (including all escrow deposits) would be assigned a 25 percent outflow rate. The agencies believe that insured operational deposits eligible for inclusion at the lower outflow rate exhibit relatively stable funding characteristics in a 30 calendar-day stress period and have a reduced likelihood of rapid outflow. Escrow deposits, while operational in nature, are more likely to be withdrawn upon the occurrence of a motivating event regardless of deposit insurance coverage, and the 25 percent outflow rate approximately reflects this aspect of escrow deposits. The agencies believe that operational deposits that are not fully covered by deposit insurance also are a less stable source of funding for covered companies. The higher outflow rate reflects the higher likelihood of withdrawal by the wholesale customer if any part of the deposit is uninsured.

Balances in these accounts should be recognized as operational deposits only to the extent that they are critically important to customers to utilize operational services offered by a covered company. The agencies believe that amounts beyond that which is critically important for the customer's operations should not be included in the operational deposit category. Section 4(b) of the proposed rule enumerates specific criteria for operational deposits that seek to limit operational deposit amounts to those that are held for operational needs, such as by excluding from operational deposits those deposit products that create economic incentives for the customer to maintain funds in the deposit in excess of what is needed for operational services.[60] The criteria for a deposit to qualify as operational are intended to be restrictive because the agencies expect these deposits to be truly operational in nature, meaning they are used for the enumerated operational services related to clearing, custody, and cash management and have contractual terms that make it unlikely that a counterparty would significantly shift this activity to other organizations within 30 days. The agencies intend to closely monitor classification of operational deposits by covered companies to ensure that the deposits meet these operational criteria.

Covered companies would be expected to develop internal policies and methodologies to ensure that amounts categorized as operational deposits are limited to only those funds needed to facilitate the customer's operational service needs. Amounts in excess of what customers have historically held to facilitate such purposes, such as surge balances, would be considered excess operational deposits. The agencies believe it would be inappropriate to give excess operational deposit amounts the same favorable treatment as deposits truly needed for operational purposes, because such treatment would provide opportunities for regulatory arbitrage and distort the proposed liquidity coverage ratio calculation. The agencies, therefore, are proposing that funds in excess of those required for the provision of operational services be excluded from operational deposit balances and treated on a counterparty-by-counterparty basis as a non-operational deposit. If a covered company is unable to separately identify excess balances and balances needed for operational services, the entire balance would be ineligible for treatment as an operational deposit. The agencies do not intend for covered companies to allow customers to retain funds in this operational deposit category unless doing so is necessary to utilize the actual services offered by a covered company.

Consistent with the Basel III LCR, deposits maintained in connection with the provision of prime brokerage services are excluded from operational deposits by focusing on the type of customer that uses operational services linked to an operational account. Under the proposal, an account cannot qualify as an operational deposit if it is provided in connection with operational services provided to an investment company, non-regulated fund, or investment adviser.

While prime brokerage clients typically use operational services related to clearing, custody, and cash management, the agencies believe that balances maintained by prime brokerage clients should not be considered operational deposits because such balances, owned by hedge funds and other institutional investors, are at risk of margin and other immediate cash

[59] *See* section II.A.2 for a description of these companies.

[60] *See* § __.4(b) of the proposed rule.

calls in stressed scenarios and have proven to be more volatile during stress periods. Moreover, after finding themselves with limited access to liquidity in the recent financial crisis, most prime brokerage customers maintain multiple prime brokerage relationships and are able to quickly shift from one covered company to another. Accordingly, the agencies are proposing that deposit balances maintained in connection with the provision of prime brokerage services be treated the same as unsecured wholesale funding provided by a financial entity or affiliate of a covered company, and thus be assigned a 100 percent outflow rate.

Finally, operational deposits exclude correspondent banking arrangements under which a covered company holds deposits owned by another depository institution bank that temporarily places excess funds in an overnight deposit with the covered company. While these deposits may meet some of the operational requirements, historically they are not stable during stressed liquidity events and therefore are assigned a 100 percent outflow rate.

The proposed rules would assign an outflow rate of 100 percent to all unsecured wholesale funding not described above.

49. *The agencies solicit commenters' views on the criteria for, and treatment of, operational deposits. What, if any, of the identified operational services should not be included or what other services not identified should be included? What, if any, additional conditions should be considered with regard to the definition of operational deposits? Is the proposed outflow rate consistent with industry experience, particularly during the recent financial crisis? Why or why not?*

50. *What are commenters' views on the proposed treatment of excess operational deposits? What operational burdens or other issues may be associated with identifying excess amounts in operational deposits? What other factors, if any, should be considered in determining whether to classify an unsecured wholesale deposit as an operational deposit?*

51. *Have the agencies appropriately identified prime brokerage services for the purposes of the exclusion of prime brokerage deposits from operational deposits? Should additional categories of customer be included, such as insurance companies or pension funds? What additional characteristics could identify prime brokerage deposits? Should the proposed rule include a definition of prime brokerage services or prime brokerage deposits and if so, how should those terms be defined? Is the higher outflow rate for prime brokerage deposits appropriate? Why or why not? What other treatments, if any, should the agencies consider?*

i. Debt Security Outflow Amount

The agencies are proposing that where a covered company is the primary market maker for its own debt securities, the outflow rate for such funding would equal 3 percent for all debt securities that are not structured securities that mature outside of a 30 calendar-day stress period and 5 percent for all debt securities that are structured debt securities that mature outside of a 30 calendar-day stress period. Under the proposal, a structured security would be a security whose cash flow characteristics depend upon one or more indices or that have embedded forwards, options, or other derivatives or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows. This outflow is in addition to any outflow that must be included in net cash outflows due to the maturity of the underlying security during a 30 calendar-day stress period.

Institutions that make markets in their own debt by quoting buy and sell prices for such instruments implicitly or explicitly indicate that they will provide bids on their own debt issuances. In such cases, a covered company may be called upon to provide liquidity to the market by purchasing its debt securities without having an offsetting sale through which it can readily recoup the cash outflow. Based on historical experience, including the recent financial crisis, in which institutions went to great lengths to ensure the liquidity of their debt securities, the agencies are proposing relatively low outflow rates for a covered company's own debt securities. The proposed rule would differentiate between structured and non-structured debt on the basis of data from stressed institutions that indicate the likelihood that structured debt require more liquidity support.

52. *What, if any, other factors should the agencies consider in identifying structured securities and the treatment for such securities under the proposal?*

53. *What additional criteria could be considered in determining whether certain unsecured wholesale funding activities should receive a 3 or 5 percent outflow rate associated with primary market maker activity?*

j. Secured Funding and Asset Exchange Outflow Amount

A secured funding transaction would be defined under the proposed rule as any funding transaction that gives rise to a cash obligation of a covered company that is secured under applicable law by a lien on specifically designated assets owned by the covered company that gives the counterparty, as holder of the lien, priority over the assets in the case of bankruptcy, insolvency, liquidation, or resolution. In practice, secured funding can be borrowings from repurchase transactions, Federal Home Loan Bank advances, secured deposits from municipalities or other public sector entities (which typically require collateralization in the United States), loans of collateral to effect customer short positions, and other secured wholesale funding arrangements with Federal Reserve Banks, regulated financial companies, non-regulated funds, or other counterparties.

Secured funding could give rise to cash outflows or increased collateral requirements in the form of additional collateral or higher quality collateral to support a given level of secured debt. In the proposed rule, this risk is reflected through the proposed secured funding transaction outflow rates, which are based on the quality and liquidity of assets posted as collateral under the terms of the transaction.[61] Secured funding outflow rates progressively increase on a spectrum that ranges from funding secured by levels 1, 2A, and 2B liquid assets to funding secured by assets that are not HQLA. For the reasons described above, the agencies believe that rather than applying an outflow treatment that is based on the nature of the funding provider, the proposed rule would generally apply a treatment that is based on the nature of the collateral securing the funding. The proposed rule recognizes customer short positions covered by other customers' collateral that is not HQLA as secured funding and applies to them an outflow rate of 50 percent. This outflow reflects the agencies' recognition that clients will not be able to close all short positions without also reducing leverage, which would offset a portion of the liquidity outflows associated with closing the short. Section 32(j)(1) of the proposed rule sets forth the outflow rates for various secured funding transactions.

The agencies are proposing to treat borrowings from Federal Reserve Banks

[61] In section __.32(g) of the proposed rule, the agencies have proposed outflow rates related to changes in collateral.

the same as other secured funding transactions because these borrowings are not automatically rolled over, and a Federal Reserve Bank may choose not to renew the borrowing. Therefore, an outflow rate based on the collateral posted is most appropriate for purposes of the proposed rule. Should the Federal Reserve Banks offer alternative facilities with different terms than the current primary credit facility, or modify the terms on the primary credit facility, outflow rates for the proposed liquidity coverage ratio may be modified.

An asset exchange would be defined under the proposed rule as a transaction that requires the counterparties to exchange non-cash assets at a future date. Asset exchanges could give rise to actual cash outflows or increased collateral requirements if the covered company is contractually obligated to provide higher-quality assets in return for less liquid, lower-quality assets. In the proposed rule, this risk is reflected through the proposed asset exchange outflow rates, which are based on the HQLA levels of the assets exchanged by each party. Asset exchange outflow rates progressively increase from the covered company posting assets that are the same HQLA level as the assets it will receive to the covered company posting assets that are of significantly lower quality than the assets it will receive. Section 32(j)(2) of the proposed rule sets forth the outflow rates for various asset exchanges.

54. *The agencies solicit commenters' views on the proposed treatment of secured funding activities. Do commenters agree with the proposed outflow rates as they relate to the collateral? Why or why not? Should municipal and other public sector entity deposits be treated as secured funding transactions? What, if any, additional secured-funding risk factors should be reflected in the rule?*

55. *What, if any, alternative treatments should the agencies consider for borrowings from a Federal Reserve Bank? Provide justification and support.*

56. *The agencies solicit commenters' views on the proposed treatment of asset exchanges. Do commenters agree with the proposed outflow rates as they relate to the collateral? Why or why not? What, if any, additional asset exchange risk factors should be reflected in the rule?*

k. Foreign Central Bank Borrowings

The agencies recognize central banks' lending terms and expectations differ by jurisdiction. Accordingly, for a covered company's borrowings from a particular foreign jurisdiction's central bank, the proposed rule would assign an outflow rate equal to the outflow rate that such jurisdiction has established for central bank borrowings under a minimum liquidity standard. If such an outflow rate has not been established in a foreign jurisdiction, the outflow rate for such borrowings would be calculated as secured funding pursuant to section 32(j) of the proposed rule.

57. *What, if any, alternative treatments should the agencies consider for foreign central bank borrowings? Should borrowings from foreign central banks be treated as borrowings from the Federal Reserve Bank? What effects on the behavior of covered companies may the difference in the treatment between Federal Reserve Bank borrowings and foreign central bank create? What unintended results may occur?*

l. Other Contractual Outflow Amounts

Under the proposed rule, a covered company would apply a 100 percent outflow rate to amounts payable 30 days or less after a calculation date under applicable contracts that are not otherwise specified in the proposed rule. These would include contractual payments such as salaries and any other payments owed 30 days or less from a calculation date that is not otherwise enumerated in section 32 of the proposed rule.

58. *The Basel III LCR standard suggests that national authorities provide outflow rates for stable value funds. Should the agencies do so? Why or why not? If so, please provide suggestions as to specific outflow rates for stable value funds. Please provide justification and supporting information.*

59. *The agencies solicit commenters' views on the proposed criteria for each of the categories discussed above, their proposed outflow rates, and the associated underlying assumptions for the proposed treatment. Are there specific outflow rates for other types of transactions that have not been included, but should be? If so, please specify the types of transactions and the applicable outflow rates that should be applied and the reasons for doing so. Alternatively, are there outflow rates that have been provided that should not be?*

m. Excluded Amounts for Intragroup Transactions

Under the proposed rule, a covered company would exclude all transactions from its outflows and inflows between the covered company and a consolidated subsidiary of the covered company or a consolidated subsidiary of the covered company and another consolidated subsidiary of the covered company. Such transactions are excluded because they involve outflows that would transfer to a company that is itself included in the financials of the covered company, so the inflows and outflows at the consolidated level should net to zero.

3. Total Cash Inflow Amount

As explained above, the total cash inflow amount for the proposed rule's liquidity coverage ratio would be limited to the lesser of (1) the sum of cash inflow amounts as described in section 33 of the proposed rule; and (2) 75 percent of expected cash outflows as calculated under section 32 of the proposed rule. The total cash inflow amount would be calculated by multiplying the outstanding balances of contractual receivables and other cash inflows as of a calculation date by the inflow rates described in section 33 of the proposed rule. The proposed rule also sets forth certain exclusions from cash inflow amounts, as described immediately below.

a. Items not included as inflows

The agencies have identified six categories of items that are explicitly excluded from cash inflows under the proposed rule. These exclusions are meant to ensure that the denominator of the proposed rule's liquidity coverage ratio would not be influenced by potential cash inflows that may not be reliable sources of liquidity during a stressed scenario.

The first excluded category would be amounts a covered company holds in operational deposits at other regulated financial companies. Because these deposits are for operational purposes, it is unlikely that a covered company would be able to withdraw these funds in a crisis to meet other liquidity needs, and they are therefore excluded.

The second excluded category would be amounts that a covered company expects to receive or is contractually entitled to receive from derivative transactions due to forward sales of mortgage loans and any derivatives that are mortgage commitments. The agencies recognize that covered companies may be receiving inflows as a result of the sale of mortgages or derivatives that are mortgage commitments within 30 days after the calculation date. However, as discussed above, the agencies believe that inflow amounts from such transactions may not materialize during a liquidity crisis or may be delayed beyond the 30 calendar-day time horizon. During the recent financial crisis, it was evident that many institutions were unable to rapidly reduce the mortgage lending pipeline

even as market demand for mortgages slowed.

The third excluded category would be amounts arising from any credit or liquidity facility extended to a covered company. The agencies believe that in a stress scenario, inflows from such facilities may not materialize. Furthermore, to the extent that a covered company relies upon inflows from credit facilities with other financial entities, it would increase the interconnectedness within the system and a stress at one institution could result in additional strain throughout the financial system as the company draws down its lines of credit. Because of these likelihoods, a covered company's credit and liquidity facilities would not be counted as inflows.

The fourth excluded category would be the amounts of any asset included in a covered company's HQLA amount under section 21 of the proposed rule and any amount payable to the covered company with respect to those assets. Given that HQLA is already included in the numerator at fair market value (as determined under GAAP), including such amounts as inflows would result in double counting. Consistent with the Basel III LCR, this exclusion also includes all HQLA that mature within 30 days.

The fifth excluded category would be any amounts payable to the covered company or any outstanding exposure to a customer or counterparty that is a nonperforming asset as of a calculation date, or the covered company has reason to expect will become a nonperforming exposure 30 calendar days or less from a calculation date. Under the proposed rule, a nonperforming exposure is any exposure that is past due by more than 90 calendar days or on nonaccrual. This is meant to recognize that it is not likely that a covered company will receive inflow amounts due from a nonperforming customer.

The sixth excluded category includes those items that have no contractual maturity date. The agencies' stress scenario assumes that in a time of liquidity stress a covered company's counterparties will not pay amounts not contractually required in order to maintain liquidity for other purposes.

60. *What, if any, additional items the agencies should explicitly exclude from inflows? What, if any excluded items should the agencies consider including in inflows? Please provide justification and supporting information.*

61. *Should the agencies treat credit and liquidity facility inflows differently than proposed? For example, should credit and liquidity facilities extended by certain counterparties be counted as inflows while others are prohibited? If so, which entities and why?*

b. Net Derivatives Cash Inflow Amount

Under the proposed rule, a covered company's net derivative cash inflow amount would equal the sum of the payments and collateral that a covered company will receive from each counterparty under derivative transactions, less, if subject to a qualifying master netting agreement, the sum of payments and collateral that the covered company will make or deliver to each counterparty. This calculation would incorporate the amounts due from and to counterparties under applicable transactions within 30 calendar days of a calculation date. Netting would be permissible at the highest level permitted by a covered company's contracts with its counterparties and could not include outflows where a covered company is already including assets in its HQLA that the counterparty has posted to support those outflows. If the derivatives transactions are not subject to a valid qualifying master netting agreement, then the derivative cash inflow amount for that counterparty would be included in the net derivative cash inflow amount and the derivative cash outflows for that counterparty would be included in the net derivative cash outflow amount, without any netting. Net derivative cash inflow should be calculated in accordance with existing valuation methodologies and expected contractual derivative cash flows. In the event that net derivative cash inflow for a particular counterparty is less than zero, such amount would be required to be included in a covered company's net derivative cash outflow amount.

As with net derivative cash outflow, net derivative cash inflow would not include amounts arising in connection with forward sales of mortgage loans and derivatives that are mortgage commitments subject to section 32(d) of the proposed rule. Net derivative cash inflow would still include derivatives that hedge interest rate risk associated with a mortgage pipeline.

c. Retail Cash Inflow Amount

The proposed rule would allow a covered company to count as inflow 50 percent of all contractual payments it expects to receive within a particular 30 calendar-day stress period from retail customers and counterparties. This inflow rate is reflective of the agencies' expectation that covered companies will need to maintain a portion of their retail lending even during periods of liquidity stress, albeit not to the same extent as they have in the past. During the recent financial crisis, several stressed institutions tightened their credit standards but continued to make loans to maintain customer relationships and avoid further signaling of distress to the market.

62. *Is the proposed retail cash inflow rate reflective of industry experience? Why or why not? What, if any, additional funding activities could be included in this category? What, if any, inflow sources should be excluded from this category?*

d. Unsecured Wholesale Cash Inflow Amount

The agencies believe that for purposes of this proposed rule, all wholesale inflows (*e.g.,* principal and interest) from regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, and identified companies (and consolidated subsidiaries of any of the foregoing), and from central banks generally would be available to meet a covered company's liquidity needs. Therefore, the agencies are proposing to assign such inflows a rate of 100 percent. This rate also reflects the assumption that covered companies would stop extending credits to such counterparties when faced with the stress envisioned by the proposed rule.

However, the agencies also expect covered companies to maintain ample liquidity to sustain core businesses lines, including continuing to extend credit to retail customers and wholesale customers and counterparties that are not financial sector companies whose securities are excluded from HQLA.[62] Indeed, one purpose of the proposed rule is to ensure that covered companies have sufficient liquidity to sustain such business lines during a period of liquidity stress. While the agencies acknowledge that, in times of liquidity stress, covered companies can curtail this activity to a limited extent, due to reputational and business considerations, covered companies would likely continue to renew at least a portion of maturing credits and extend some new loans. Therefore, the agencies are proposing to apply an inflow rate of 50 percent for inflows due from wholesale customers or counterparties that are not regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or identified companies, or consolidated subsidiary of any of the foregoing. With respect to revolving credit facilities, already drawn

[62] *See* section II.A.2 for a description of these companies.

amounts would not be included in a covered company's inflow amount, and undrawn amounts would be treated as outflows under section 32(e) of the proposed rule. This is based upon the agencies' assumption that a covered company's counterparty would not repay funds it is not contractually obligated to repay in a stressed scenario.

63. *What are commenters' views regarding the differing rates for unsecured wholesale inflows? What, if any, modifications should the agencies consider making to the proposed inflow rates? Provide justification and supporting data.*

e. Securities Cash Inflow Amount

Inflows from securities owned by a covered company that are not included in a covered company's HQLA amount would receive a 100 percent inflow rate. Accordingly, if an asset is not included in the HQLA amount, all contractual dividend, interest, and principal payments due and expected to be paid to a covered company, regardless of their quality or liquidity, would receive an inflow rate of 100 percent.

64. *What, if any, modifications should the agencies consider for the proposed rate for securities inflows? Please provide justification and supporting data.*

f. Secured Lending and Asset Exchange Cash Inflow Amount

Under the proposed rule, a covered company would be able to recognize cash inflows from secured lending transactions. The proposed rule would define a secured lending transaction as any lending transaction that gives rise to a cash obligation of a counterparty to a covered company that is secured under applicable law by a lien on specifically designated assets owned by the counterparty and included in the covered company's HQLA amount that gives the covered company, as a holder of the lien, priority over the assets in the case of bankruptcy, insolvency, liquidation, or resolution and includes reverse repurchase transactions and securities borrowing transactions. If the specifically designated assets are not included in a covered company's HQLA amount but are still held by the covered company, then the transaction would be included in the unsecured wholesale cash inflow amount. Secured lending transactions could give rise to cash inflows or additional or higher quality collateral being provided to a covered company to support a given level of secured debt.

Under the proposed rule, secured lending transaction inflow rates progressively increase on a spectrum that ranges from funding secured by levels 2B and 2A liquid assets to lending secured by assets that are not HQLA.[63] A covered company also may apply a 50 percent inflow rate to the contractual payments due from customers that have borrowed on margin, where such loans are collateralized. These inflows could only be counted if a covered company is not including the collateral it received in its HQLA amount or using it to cover any of its short positions.

Similarly, asset exchanges could give rise to actual cash inflow or decreased collateral requirements if the covered company's counterparty is contractually obligated to provide higher-quality assets in return for less liquid, lower-quality assets. In the proposed rule, this is reflected through the proposed asset exchange inflow rates, which are based on the HQLA level of the asset to be posted by a covered company and the HQLA level of the asset posted by the counterparty. Asset exchange inflow rates progressively increase on a spectrum that ranges from receiving assets that are the same HQLA level as the assets a covered company is required to post to receiving assets that are of significantly higher quality than the assets that the covered company is required to post. Section 33(f)(2) of the proposed rule sets forth the inflow amounts for various asset exchanges.

65. *The agencies solicit commenters' views on the treatment of secured lending transaction and asset exchange inflows. What, if any, modifications should the agencies consider? Specifically, what are commenters' perspectives on when an inflow should be reflected in the ratio's denominator as opposed to the HQLA amount? Provide justification and supporting data.*

## III. Liquidity Coverage Ratio Shortfall

While the Basel III LCR provides that a banking organization is required to maintain an adequate amount of HQLA in order to meet its liquidity needs within a 30 calendar-day stress period, it also makes clear that it may be necessary for a banking organization to fall below the requirement during a period of liquidity stress. The Basel III LCR therefore provides that any supervisory decisions in response to a reduction of a banking organization's liquidity coverage ratio should take into consideration the objectives and definitions of the Basel III LCR. This provision of the Basel III LCR indicates that supervisory actions should not discourage or deter a banking organization from using its HQLA when necessary to meet unforeseen liquidity needs arising from financial stress that exceeds normal business fluctuations.

The agencies are proposing a supervisory framework for addressing a shortfall with respect to the proposed rule's liquidity coverage ratio that is consistent with the intent of having HQLA available for use during stressed conditions as described in the Basel III LCR. This approach also reflects the agencies' views on the appropriate supervisory response to such shortfalls. The agencies understand that there are a wide variety of potential liquidity stresses that a covered company may experience (both idiosyncratic and market-wide), and that it is difficult to foresee the different circumstances that may precipitate or accompany such stress scenarios. Therefore, the agencies believe that the regulatory framework for the proposed rule's liquidity coverage ratio must be sufficiently flexible to allow supervisors to respond appropriately under the given circumstances surrounding a liquidity coverage ratio shortfall.

Accordingly, the proposed rule sets forth notice and response procedures that would require a covered company to notify its primary Federal supervisor of any liquidity coverage ratio shortfall on any business day and provides the necessary flexibility in the supervisory response. In addition, if a covered company's liquidity coverage ratio is below the minimum requirement for three consecutive business days or if its supervisor has determined that the covered company is otherwise materially noncompliant with the proposed rule, the covered company would be required to provide to its supervisor a plan for remediation. As set forth in section 40(b) of the proposed rule, the remediation plan would need to include an assessment of the covered company's liquidity position, the actions the covered company has taken and will take to achieve full compliance with the proposed rule, an estimated timeframe for achieving compliance, and a commitment to report to its supervisor no less than weekly on progress to achieve compliance with the plan until full compliance with the proposed rule has been achieved.

A supervisory or enforcement action may be appropriate based on operational issues at a covered company, whether the violation is a part of a pattern, whether the liquidity shortfall was temporary or caused by an unusual event, and the extent of the shortfall or the noncompliance. Depending on the circumstances, a liquidity coverage ratio shortfall below

[63] *See* proposed rule §§ __.33(f)(1)(i)–(iv).

100 percent would not necessarily result in supervisory action, but, at a minimum, would result in heightened supervisory monitoring. For example, as with other regulatory violations, a covered company may be required to enter into a written agreement if it does not meet the proposed minimum requirement within an appropriate period of time.

The agencies would use existing supervisory processes and procedures for addressing a covered company's liquidity coverage ratio shortfall under the proposed rule. As with existing supervisory actions to address deficiencies in regulatory compliance or in risk management, the actions to be taken if a covered company's liquidity coverage ratio were to fall below 100 percent would be at the discretion of the appropriate Federal banking agency.

66. *Is the current banking supervisory regime sufficient to address situations in which a covered company needs to utilize its stock of HQLA? Why or why not?*

67. *Are there additional supervisory tools that the agencies could rely on to address situations in which a covered company needs to utilize its stock of HQLA? If so, provide detailed examples and explanations.*

68. *Should a de minimis exception to a liquidity coverage ratio shortfall be implemented, such that a covered company would not need to report such a shortfall, provided its liquidity coverage ratio returns to the required minimum within a short grace period? If so, what de minimis amount would be appropriate and why? What duration of grace period would be appropriate and why?*

69. *Should a covered company be required to submit a separate remediation plan to address its liquidity coverage ratio shortfall or should a modification to existing plans, such as contingency funding plans that include provisions to address the liquidity shortfalls, be sufficient? Please provide justifications supporting such a view.*

70. *Should the supervisory response differ depending on the cause of the stress event? Why or why not?*

71. *Should restrictions be imposed on the circumstances under which a covered company's liquidity coverage ratio may fall below 100 percent? If so, provide detailed examples and explanations.*

## IV. Transition and Timing

The agencies are proposing to implement a transition period for the proposed rule's liquidity coverage ratio that is more accelerated than the transition provided in the Basel III Revised LCR Framework. The proposed rule would require covered companies to comply with the minimum liquidity coverage ratio as follows: 80 percent on January 1, 2015, 90 percent on January 1, 2016, and 100 percent on January 1, 2017 and thereafter. The agencies are proposing an accelerated transition period for covered companies to build on the strong liquidity positions these companies have achieved since the recent financial crisis, thereby providing greater stability to the firms and the financial system. The proposed transition period accounts for the potential implications of the proposed rule on financial markets, credit extension, and economic growth and seeks to balance these concerns with the proposed liquidity coverage ratio's important role in promoting a more robust and resilient banking sector.

While these transition periods are intended to facilitate compliance with a new minimum liquidity requirement, the agencies expect that covered companies with liquidity coverage ratios at or near the 100 percent minimum generally would not reduce their liquidity coverage during the transition period, as reflected by this proposed requirement. The agencies emphasize that the proposed rule's liquidity coverage ratio is a minimum requirement, and that companies should have internal liquidity management systems and policies in place to ensure they hold liquid assets sufficient to meet their liquidity needs that could arise in a period of stress. The transition provisions of the final rule are also set forth in table 2 below.

TABLE 2: TRANSITION PERIOD FOR THE LIQUIDITY COVERAGE RATIO

| Transition Period | Liquidity coverage ratio |
|---|---|
| Calendar year 2015 | 0.80 |
| Calendar year 2016 | 0.90 |
| Calendar year 2017 and thereafter | 1.00 |

72. *What concerns, if any, do commenters have in meeting the proposed transitional arrangements?*

73. *Are the proposed transition periods appropriate for all covered companies? Are there any situations that may prevent a covered company from achieving compliance within the proposed transition periods? Are there alternatives to the proposed transition periods that would better achieve the agencies' goal of establishing a quantitative liquidity requirement in a timely fashion while not disrupting lending and the real economy?*

## V. Modified Liquidity Coverage Ratio Applicable to Covered Depository Institution Holding Companies

### *A. Overview and Applicability*

As noted above, all bank holding companies subject to the proposed rule are subject to enhanced liquidity requirements under section 165 of the Dodd-Frank Act.[64] Section 165 additionally authorizes the Board to tailor the application of the standards, including differentiating among covered companies on an individual basis or by category. When differentiating among companies for purposes of applying the standards established under section 165, the Board may consider the companies' size, capital structure, riskiness, complexity, financial activities, and any other risk-related factor the Board deems appropriate.[65]

The Basel III LCR was developed for internationally active banking organizations, taking into account the complexity of their funding sources and structure. While covered depository institution holding companies with at least $50 billion in total consolidated assets that are not covered companies (modified LCR holding companies) are large financial companies with extensive operations in banking, brokerage, and other financial activities, they generally are smaller in size, less complex in structure, and less reliant on riskier forms of market funding. These companies tend to have simpler balance sheets, better enabling management and supervisors to take corrective actions more quickly than is the case with an internationally active banking organization in a stressed scenario.

Accordingly, the Board is tailoring the proposed rule's liquidity coverage ratio requirement as applied to the modified LCR holding companies pursuant to its authority under section 165 of the Dodd-Frank Act. While the Board believes it is important for all bank holding companies subject to section 165 of the Dodd-Frank Act (and similarly situated savings and loan holding companies) to be subject to a quantitative liquidity requirement as an enhanced prudential standard, it recognizes that these companies would likely not have as great a systemic impact as larger, more complex companies if they experienced liquidity stress. Therefore, because the options for addressing their liquidity needs under such a scenario (or, if necessary, for resolving such companies) would likely be less complex and therefore more likely to be implemented in a

[64] *See* 12 U.S.C. 5365(a) and (b).

[65] *See* 12 U.S.C. 5365(a)(2).

shorter period of time, the Board is proposing to establish a modified liquidity coverage ratio incorporating a shorter (21-calendar day) stress scenario for the modified LCR holding companies.

The modified liquidity coverage ratio would be a simpler, less stringent form of the proposed rule's liquidity coverage ratio (for the purposes of this section V, unmodified liquidity coverage ratio) and would have outflow rates based on a 21calendar-day rather than a 30 calendar-day stress scenario. As a result, outflow rates for the modified liquidity coverage ratio generally would be 70 percent of the unmodified liquidity coverage ratio's outflow rates. In addition, modified LCR holding companies would not have to calculate a peak maximum cumulative outflow day for total net cash outflows as required for covered companies subject to the unmodified liquidity coverage ratio.[66] The requirements of the modified liquidity coverage ratio standard would otherwise be the same as the unmodified liquidity coverage ratio as described above, including the proposed HQLA criteria and the calculation of the HQLA amount, and modified LCR holding companies would have to comply with all unmodified aspects of the standard to the same extent as covered companies.

*B. High-Quality Liquid Assets*

Modified LCR holding companies generally would calculate their HQLA amount as covered companies do pursuant to section 21 of the proposed rule. However, when calculating the adjusted liquid asset amounts, modified LCR holding companies would incorporate the unwinding of secured funding and lending transactions, asset exchanges, and collateralized derivative transactions that mature within 21 calendar days (rather than 30 calendar days) of a calculation date. All other aspects of the calculation would remain the same and assets that do not qualify as HQLA under the proposed rule could not be included into the HQLA amount of a modified LCR holding company.

The adjustments of the modified liquidity coverage ratio reflect the lesser size and complexity of modified LCR holding companies through a shorter stress scenario, which is not relevant to the quality of liquid assets that a company would need to cover its needs during any stress scenario. Therefore, the HQLA amount would be calculated on the same basis under the modified liquidity coverage ratio as the unmodified liquidity coverage ratio, with the only adjustment reflecting the shorter stress scenario period of the modified liquidity coverage ratio. The policy purposes and rationales for applying the unmodified requirements to covered companies, articulated above, also pertain to the application of these requirements to modified LCR holding companies.

*C. Total Net Cash Outflow*

Under the unmodified liquidity coverage ratio, the outflow and inflow rates applied to different sources of outflows and inflows are based on a 30 calendar-day stress scenario. Because the modified liquidity coverage ratio is based on a 21calendar-day stress scenario, 70 percent of each outflow and inflow rate for outflows and inflows without a contractual maturity date, as described above, would be applied in calculating total net cash outflow under the modified liquidity coverage ratio, as set forth in Table 3. Outflows and inflows with a contractual maturity date would be calculated on the basis of the maturity (as determined under the proposal and described above) occurring within 21 calendar days from a calculation date, rather than 30 calendar days.

In addition, as explained above, a modified LCR holding company would not be required to use its peak maximum cumulative outflow day as its total net cash outflow amount. Instead, the total net cash outflow amount under the modified liquidity coverage ratio would be the difference between a modified LCR company's outflows amounts and inflows amounts, calculated as required under the proposed rule. The Board believes this approach is appropriate as a modified LCR holding company would likely be less dependent on cash inflows to meet the proposed rule's liquidity coverage ratio requirement, thereby reducing its likelihood of having a significant maturity mismatch within a 21 calendar-day stress period. However, as part of sound liquidity risk management, modified LCR holding companies should be aware of any potential mismatches within the 21 calendar-day stress period and ensure that a sufficient amount of HQLA is available to meet any net cash outflow gaps throughout the period.

TABLE 3—NON-MATURITY MODIFIED OUTFLOWS

| Category | Agencies' liquidity coverage ratio outflow amount | Modified liquidity coverage ratio outflow amount |
|---|---|---|
| Unsecured retail funding: | | |
| Stable retail deposits | 3.0% | 2.1% |
| Other retail deposits | 10.0 | 7.0 |
| Other retail funding | 100.0 | 70.0 |
| Retail brokered deposits: | | |
| Brokered deposits that mature later than 30 calendar days from the calculation date | 10.0 | 7.0 |
| Reciprocal brokered deposits, entirely covered by deposit insurance | 10.0 | 7.0 |
| Reciprocal brokered deposits, not entirely covered by deposit insurance | 25.0 | 17.5 |
| Brokered sweep deposits, issued by a consolidated subsidiary, entirely covered by deposit insurance | 10.0 | 7.0 |
| Brokered sweep deposits, not issued by a consolidated subsidiary, entirely covered by deposit insurance | 25.0 | 17.5 |
| Brokered sweep deposits, not entirely covered by deposit insurance | 40.0 | 28.0 |
| All other retail brokered deposits | 100.0 | 70.0 |
| Unsecured wholesale funding: | | |
| Non-operational, entirely covered by deposit insurance | 20.0 | 14.0 |
| Non-operational, not entirely covered by deposit insurance | 40.0 | 28.0 |
| Non-operational, from financial entity or consolidated subsidiary | 100.0 | 70.0 |
| Operational deposit, entirely covered by deposit insurance | 5.0 | 3.5 |

[66] *See supra* section II.B.

TABLE 3—NON-MATURITY MODIFIED OUTFLOWS—Continued

| Category | Agencies' liquidity coverage ratio outflow amount | Modified liquidity coverage ratio outflow amount |
|---|---|---|
| Operational deposit, not entirely covered by deposit insurance | 25.0 | 17.5 |
| All other wholesale funding | 100.0 | 70.0 |
| Commitments: | | |
| Undrawn credit and liquidity facilities to retail customers | 5.0 | 3.5 |
| Undrawn credit facility to wholesale customers | 10.0 | 7.0 |
| Undrawn liquidity facility to wholesale customers | 30.0 | 21.0 |
| Undrawn credit and liquidity facilities to certain banking organizations | 50.0 | 35.0 |
| Undrawn credit facility to financial entities | 40.0 | 28.0 |
| Undrawn liquidity facility to financial entities | 100.0 | 70.0 |
| Undrawn liquidity facilities to SPEs or any other entity | 100.0 | 70.0 |

74. *What, if any, modifications to the modified liquidity coverage ratio should the Board consider? In particular, what, if any, modifications to incorporation of the 21-calendar day stress period should be considered? Please provide justification and supporting data.*

75. *What, if any, modifications to the calculation of total net cash outflow rate should the Board consider? What versions of the peak maximum cumulative outflow day might be appropriate for the modified liquidity coverage ratio? Please provide justification and supporting data.*

76. *What operational burdens may modified LCR holding companies face in complying with the proposal? What modifications to transition periods should the Board consider for modified LCR holding companies?*

## VI. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite your comments on how to make this proposal easier to understand. For example:

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

## VII. Regulatory Flexibility Act

The Regulatory Flexibility Act[67] (RFA), requires an agency to either provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $500 million). In accordance with section 3(a) of the RFA, the Board is publishing an initial regulatory flexibility analysis with respect to the proposed rule. The OCC and FDIC are certifying that the proposed rule will not have a significant economic impact on a substantial number of small entities.

*Board*

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

The proposed rule is intended to implement a quantitative liquidity requirement consistent with the liquidity coverage ratio standard established by the Basel Committee on Banking Supervision applicable for bank holding companies, savings and loan holding companies, nonbank financial companies, and state member banks.

Under regulations issued by the Small Business Administration, a ''small entity'' includes firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7 million or less in assets to $500 million or less in assets.[68] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies, savings and loan holding companies, nonbank financial companies, and state member banks with asset sizes of $500 million or less are small entities for purposes of the RFA.

As discussed previously in this preamble, the proposed rule generally would apply to Board-regulated institutions with (i) consolidated total assets equal to $250 billion or more; (ii) consolidated total on-balance sheet foreign exposure equal to $10 billion or more; or (iii) consolidated total assets equal to $10 billion or more if that Board-regulated institution is a consolidated subsidiary of a company subject to the proposed rule or if a company subject to the proposed rule owns, controls, or holds with the power to vote 25 percent or more of a class of voting securities of the company. The Board is also proposing to implement a modified version of the liquidity coverage ratio as enhanced prudential standards for top-tier bank holding companies and savings and loan holding companies domiciled in the United States that have consolidated total assets equal to $50 billion or more. The modified version of the liquidity coverage ratio would not apply to (i) a grandfathered unitary savings and loan

[67] 5 U.S.C. 601 *et seq.*

[68] 13 CFR 121.201.

holding company that derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act; (ii) a top-tier bank holding company or savings and loan holding company that is an insurance underwriting company; or (iii) a top-tier bank holding company or savings and loan holding company that had 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies and either calculates its total consolidated assets in accordance with GAAP or estimates its total consolidated assets, subject to review and adjustment by the Board.

Companies that are subject to the proposed rule therefore substantially exceed the $500 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations. The proposed rule would apply to a nonbank financial company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[69] It is therefore unlikely that a financial firm that is at or below the $500 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities, are not likely to pose a threat to the financial stability of the United States.

As noted above, because the proposed rule is not likely to apply to any company with assets of $500 million or less, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with standards established by the Basel Committee on Banking Supervision.

*OCC*

The RFA requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $500 million or less and trust companies with assets of $35.5 million or less).

As discussed previously in this Supplementary Information section, the proposed rule generally would apply to national banks and Federal savings associations with: (i) consolidated total assets equal to $250 billion or more; (ii) consolidated total on-balance sheet foreign exposure equal to $10 billion or more; or (iii) consolidated total assets equal to $10 billion or more if a national bank or Federal savings association is a consolidated subsidiary of a company subject to the proposed rule. As of December 31, 2012, the OCC supervises 1,291 small entities. Since the proposed rule would only apply to institutions that have total consolidated total assets or consolidated total on-balance sheet foreign exposure equal to $10 billion or more, the proposed rule would not have any impact on small banks and small Federal savings associations. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small OCC-supervised entities.

The OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small national banks and small Federal savings associations.

*FDIC*

The RFA requires an agency to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $500 million or less).

As described in section I of this preamble, the proposed rule would establish a quantitative liquidity standard for internationally active banking organizations with $250 billion or more in total assets or $10 billion or more of on-balance sheet foreign exposure (internationally active banking organizations), covered nonbank companies, and their consolidated subsidiary depository institutions with $10 billion or more in in total consolidated assets. Two FDIC-supervised institutions satisfy the foregoing criteria, and neither is a small entity. As of June 30, 2013, based on a $500 million threshold, 2 (out of 3,363) small state nonmember banks, and zero (out of 53) small state savings associations were subsidiaries of a covered company that is subject to the proposed rule. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the NPR would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

## VIII. Paperwork Reduction Act

*Request for Comment on Proposed Information Collection*

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the 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 information collection requirements contained in this joint notice of proposed rulemaking are being submitted by the FDIC and OCC to OMB for approval under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections 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.

[69] *See* 77 FR 21637 (April 11, 2012).

All comments will become a matter of public record. Commenters may submit comments on aspects of this notice that may affect burden estimates at the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503; by facsimile to 202–395–6974; or by email to: *oira_submission@omb.eop.gov.* Attention, Federal Banking Agency Desk Officer.

*Proposed Information Collection*

*Title of Information Collection:* Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring.

*Frequency of Response:* Event generated.

*Affected Public*

*FDIC:* Insured state non-member banks, insured state branches of foreign banks, state savings associations, and certain subsidiaries of these entities.

*OCC:* National banks, Federal savings associations, or any operating subsidiary thereof.

*Board:* Insured state member banks, bank holding companies, savings and loan holding companies, nonbank financial companies supervised by the Board, and any subsidiary thereof.

*Abstract:* The notice sets forth implementing a quantitative liquidity requirement consistent with the liquidity coverage ratio standard established by the Basel Committee on Banking Supervision. The proposed rule contains requirements subject to the PRA. The reporting and recordkeeping requirements in the joint proposed rule are found in § __.40. Compliance with the information collections would be mandatory. Responses to the information collections would be kept confidential and there would be no mandatory retention period for the proposed collections of information.

Section __.40 would require that an institution must notify its primary Federal supervisor on any day when its liquidity coverage ratio is calculated to be less than the minimum requirement in § __.10. If an institution's liquidity coverage ratio is below the minimum requirement in § __.10 for three consecutive days, or if its primary Federal supervisor has determined that the institution is otherwise materially noncompliant, the institution must promptly provide a plan for achieving compliance with the minimum liquidity requirement in § __.10 and all other requirements of this part to its primary Federal supervisor.

The liquidity plan must include, as applicable, (1) an assessment of the institution's liquidity position; (2) the actions the institution has taken and will take to achieve full compliance including a plan for adjusting the institution's risk profile, risk management, and funding sources in order to achieve full compliance and a plan for remediating any operational or management issues that contributed to noncompliance; (3) an estimated timeframe for achieving full compliance; and (4) a commitment to provide a progress report to its primary Federal supervisor at least weekly until full compliance is achieved.

*Estimated Paperwork Burden*

Estimated Burden Per Response: reporting—0.25 hours; recordkeeping—100 hours.

Frequency: reporting—5; recordkeeping—1.

*FDIC*

Estimated Number of Respondents: 2.

Total Estimated Annual Burden: reporting—3 hours; recordkeeping—200 hours.

*OCC*

Estimated Number of Respondents: 3.

Total Estimated Annual Burden: reporting—4 hours; recordkeeping—300 hours.

*Board*

Estimated Number of Respondents: 3.

Total Estimated Annual Burden: reporting—4 hours; recordkeeping—300 hours.

## IX. OCC Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. The current inflation-adjusted expenditure threshold is $141 million. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

In conducting the regulatory analysis, UMRA requires each federal agency to provide:

- The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need;
- An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions;
- An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs;
- An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable non-regulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives;
- An estimate of any disproportionate budgetary effects of the federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector; and
- An estimate of the effect the rulemaking action may have on the national economy, if the OCC determines that such estimates are reasonably feasible and that such effect is relevant and material.

*Need for Regulatory Action*

Liquidity is defined as a financial institution's capacity to readily meet its

cash and collateral obligations at a reasonable cost. As discussed in the preamble of the proposed rule, the recent financial crisis saw unprecedented levels of liquidity support from governments and central banks around the world, suggesting that banks and other financial market participants were not adequately prepared to meet their cash and collateral obligations at reasonable cost. Table 1 provides a list of some of the liquidity facilities provided by the Federal Reserve and the FDIC during the financial crisis. The proposed rule introduces the U.S. implementation of one of the two international liquidity standards (the liquidity coverage ratio and the net stable funding ratio) intended by the Basel Committee on Banking Supervision and the U.S. banking agencies to create a more resilient financial sector by strengthening the banking sector's liquidity risk management.

A maturity mismatch in a bank's balance sheet creates liquidity risk. Banks will typically manage this liquidity risk by holding enough liquid assets to meet their usual net outflow demands. The presence of a central bank that can serve as a lender of last resort provides an element of liquidity insurance, which, as is often the case with insurance, creates moral hazard. Because of the presence of a lender of last resort, banks may not hold socially optimal levels of liquid assets. The LCR buffer established by the proposed rule offsets the moral hazard to a degree, and lowers the probability of a liquidity crisis and may limit the severity of liquidity crises when they do occur. Reducing the severity of liquidity crises will also limit the damage from negative externalities associated with liquidity crises, e.g., asset fire sales, rapid deleveraging, liquidity hoarding, and reduced credit availability.[70] Furthermore, the LCR buffer at institutions affected by the proposed rule could help alleviate liquidity stress at smaller institutions that may still hold less than the socially optimal level of liquid assets because of ongoing moral hazard problems. As van den End and Kruidhof (2013) point out, the degree of systemic liquidity stress will ultimately depend on the size of liquidity shocks the financial system encounters, the size of the initial liquidity buffer, regulatory constraints on the buffer, and behavioral reactions by banks and other market participants.

Capital and liquidity in the banking sector provide critical buffers to the broader economy. Capital allows the banking sector to absorb unexpected losses from some customers while continuing to extend credit to others. Liquidity in the banking sector allows banks to provide cash to customers who have unexpected demands for liquidity. The financial crisis of 2007–2009 began with a severe liquidity crisis when the asset-backed commercial paper market (ABCP) essentially froze in August of 2007 and the demand for liquidity from the banking sector quickly outstripped its supply of liquid assets. Acharya, Afonso, and Kovner (2013) discuss the problems in the ABCP market in 2007 and how foreign and domestic banks scrambled for liquidity in U.S. financial markets.[71] They find that U.S. banks sought to increase liquidity by increasing deposits and borrowing through Federal Home Loan Bank advances. Foreign banks operating in the United States were generally not eligible for Federal Home Loan Bank advances and sought liquidity by decreasing overnight interbank lending and borrowed from the Federal Reserve's Term Auction Facility when that became available.

TABLE 1—SPECIAL LIQUIDITY FACILITIES INTRODUCED DURING THE 2007–2009 FINANCIAL CRISIS

| Facility or program | Dates | Type of activity | Activity levels |
|---|---|---|---|
| Agency Mortgage-Backed Security (MBS) Purchase Program. | Began 11/2008 | Purchase of Agency guaranteed MBS. | $1.25 trillion purchased between 1/2009 and 3/2010. |
| Term Auction Facility | 12/12/2007–3/8/2010 | 28-day and 84-day loans to depository institutions. | Maximum one day auction of $142.3 billion on 2/12/2009. |
| Central Bank Liquidity Swap Lines | Began 12/12/2007 | 1-day to 90-day swap lines of credit with certain foreign central banks. | Maximum one day extension of $422.5 billion on 10/15/2008. |
| Primary Dealer Credit Facility | Announced 3/16/2008 | Overnight loan facility for primary dealers. | Maximum of $155.8 billion on 9/29/2008. |
| Term Securities Lending Facility | Announced 3/11/2008 | One-month loans of Treasury Securities to primary dealers. | One-day Maximum of $75.0 billion on 3/28/2008. |
| Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility. | Announced 9/19/2008 | Nonrecourse loans to financial institutions to purchase eligible ABCP from Money Market Mutual Funds. | One-day Maximum of $31.1 billion on 9/23/2008. |
| Commercial Paper Funding Facility | Announced 10/7/2008 | Three-month loans to specially created company that purchased commercial paper from eligible issuers. | One-day Maximum lent of $56.6 billion on 10/29/2008. |
| Term Asset-Backed Securities Loan Facility. | Announced 11/25/2008 | Nonrecourse loans of up to five years to holders of eligible asset-backed securities. | Loan Total of $71.1 billion. |

[70] For a discussion of liquidity risk and problems associated with liquidity risk, see Douglas W. Diamond and Philip H. Dybvig, ''Bank Runs, Deposit Insurance, and Liquidity'', *Journal of Political Economy,* Vol. 91, No. 3, June 1983, pp. 401–419 and Jan Willem van den End and Mark Kruidhof, ''Modelling the liquidity ratio as macroprudential instrument'', *Journal of Banking Regulation,* Vol. 14, No. 2, 2013, pp. 91–106.

[71] *See* Acharya, Viral V., Gara Afonso, and Anna Kovner, (2013), ''How Do Global Banks Scramble for Liquidity? Evidence from the Asset-Backed Commercial Paper Freeze of 2007'', Federal Reserve Bank of New York, Staff Report No. 623, August 2013.

TABLE 1—SPECIAL LIQUIDITY FACILITIES INTRODUCED DURING THE 2007–2009 FINANCIAL CRISIS—Continued

| Facility or program | Dates | Type of activity | Activity levels |
|---|---|---|---|
| FDIC Temporary Liquidity Guarantee Program. | 10/14/2008 | Transaction Account Guarantee Program (TAGP) guaranteed noninterest-bearing transaction accounts; Debt Guarantee Program (DGP) guaranteed certain newly issued senior unsecured debt. | TAGP covered $834.5 billion in eligible deposits as of 12/31/2009; DGP peak guarantee of $348.5 billion of outstanding debt. |

Source: Federal Reserve, FDIC.

A study by Cornett, McNutt, Strahan, and Tehranian (2011) suggests that banks with less liquid assets at the start of the crisis reduced lending, and that the overall effort by banks to manage the liquidity crisis led to a decrease in credit supply.[72] Cornett *et al* also point out that through new and existing credit lines, banks provide crucial liquidity to the overall market during a liquidity drought. This sentiment is shared in an earlier study by Gatev and Strahan (2006), which suggests that large firms that use the commercial paper and bond markets during normal times, depend upon banks for liquidity during periods of market stress. Gatev and Strahan also provide evidence that banks tend to experience funding inflows during liquidity crises, for instance, when commercial-paper spreads widen. Gatev and Strahan's results show that when commercial-paper spreads widen, banks increase their reliance on transaction deposits and yields on large certificates-of-deposit tend to fall. They attribute these inflows at least partially to implicit government support for banks. They also point out that deposit outflows during the Great Depression led to a severe credit contraction.[73]

This evidence of the role that banks play in providing liquidity during a liquidity crisis highlights the importance of ensuring that banks are properly managing their liquidity risk so that they are able to provide liquidity to others under all but the most dire of circumstances. The proposed rule does not seek to ensure that banks always have a specific amount of high quality liquid assets, because such a requirement could prove counterproductive during a liquidity crisis. Rather, the proposed rule seeks to ensure that certain banks have an amount of high quality liquid assets that will enable them to meet their own liquidity needs and the liquidity needs of their customers, even during periods of market stress.

*The Proposed Rule*

The proposed rule would require covered institutions to maintain a liquidity coverage ratio (LCR) according to the transition schedule (shown in table 2) beginning January 1, 2015.

TABLE 2—TRANSITION PERIOD FOR THE MINIMUM LIQUIDITY COVERAGE RATIO

| Calendar year | Minimum liquidity coverage ratio (in percent) |
|---|---|
| 2015 | 80 |
| 2016 | 90 |
| 2017, and beyond | 100 |

The proposed rule would require covered institutions to calculate their LCR on a daily basis at a set time selected by the institution. The proposed rule does not require a covered institution to report its LCR to the appropriate regulatory agency unless the institution expects a shortfall at its selected reporting time.

The LCR is equal to the bank's qualifying high-quality liquid assets (HQLA) divided by the bank's total net cash outflows over a prospective 30-day liquidity stress scenario:

LCR = [(HQLA)/(Total net cash outflow)] * 100.

HQLA = (Level 1 liquid assets − Required Reserves) + .85*(Level 2A liquid assets) + .5*(Level 2B liquid assets) − (the maximum of the Adjusted or Unadjusted Excess HQLA Amount).

Total net cash outflow = (Total cash outflow) − (Limited Total cash inflow), where the total net cash outflow is equal to total net cash outflow on the day within the 30-day stress period that has the largest net cumulative cash outflows after limiting cash inflow amounts to 75 percent of cash outflows.

When the LCR of a covered institution falls below the minimum LCR on a particular day, the institution must notify its primary federal supervisor. If the LCR is below the minimum LCR for three consecutive business days, the institution must submit a plan for remediation of the shortfall to its primary federal supervisor. In addition to public disclosure requirements described later in this section, the proposed rule includes various reporting requirements that a covered institution must make to its primary federal regulator on a periodic basis.

Both the Basel III LCR framework and the proposed rule recognize the importance of allowing a covered institution to use its HQLA when necessary to meet liquidity needs. The proposed rule would require a covered banking organization to report to its appropriate federal banking agency when its liquidity coverage ratio falls below 100 percent on any business day. In addition, if a covered banking organization's LCR is below 100 percent for three consecutive business days, then the covered banking organization would be required to provide its supervisory agency with (1) the reasons its liquidity coverage ratio has fallen below the minimum, and (2) a plan for remediation. While an LCR shortfall will always result in supervisory monitoring, circumstances will dictate whether the shortfall results in supervisory enforcement action. Existing supervisory processes and procedures related to regulatory compliance and risk management would help determine the appropriate response to LCR non-compliance by the appropriate federal banking agency.

*Institutions Affected by the Proposed Rule*

The proposed rule would apply to (1) all internationally active banking organizations with more than $250 billion in total assets or more than $10 billion in on-balance sheet foreign exposure and to their subsidiary depository institutions with $10 billion or more in total consolidated assets, and

[72] *See* Cornett, Marcia Millon, Jamie John McNutt, Philip E. Strahan, and Hassan Tehranian, (2011), ''Liquidity risk management and credit supply in the financial crisis,'' *Journal of Financial Economics,* Vol. 101, pp. 297–312.

[73] *See* Gatev, Evan, and Philip E. Strahan, (2006), ''Banks' Advantage in Hedging Liquidity Risk: Theory and Evidence from the Commercial Paper Market,'' *Journal of Finance,* Vol. 61, No. 2, pp. 867–892.

(2) companies designated for supervision by the Federal Reserve Board by the Financial Stability Oversight Council under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act that do not have significant insurance operations, and to their consolidated subsidiaries that are depository institutions with $10 billion or more in total consolidated assets. As of June 30, 2013, we estimate that approximately 16 bank holding companies will be subject to the proposed rule and 27 subsidiary depository institutions with $10 billion or more in consolidated assets. Of these, 13 holding companies include OCC-supervised institutions (national bank or federal savings association), and within these 13 holding companies, there are a total of 21 OCC-supervised subsidiaries with $10 billion or more in consolidated assets. Thus, we estimate that 21 OCC-supervised banks will be subject to the proposed rule.

*Estimated Costs and Benefits of the Proposed Rule*

The proposed rule entails costs in two principal areas: the operational costs associated with establishing programs and procedures to calculate and report the LCR on a daily basis, and the opportunity costs of adjusting the bank's assets and liabilities to comply with the minimum LCR standard on a daily basis. The benefits of the proposed rule are qualitative in nature, but substantial nonetheless. As described by the Basel Committee on Banking Supervision, ''the objective of the LCR is to promote the short-term resilience of the liquidity risk profile of banks.'' [74] A principal benefit of the proposed rule is that, in the guise of the LCR, the proposed rule establishes a measure of liquidity that will be consistent across time and across covered institutions. A consistent measure of liquidity could prove invaluable to bank supervisors and bank managers during periods of financial market stress.

To help calibrate the LCR proposal and gauge the distance covered institutions may have to cover to comply with a liquidity rule, the banking agencies have been conducting a quantitative impact study (QIS) by collecting consolidated data from bank holding companies on various components of the LCR and the net stable funding ratio. We use QIS data from the fourth quarter of 2012, to estimate the current LCR shortfall across all OCC-supervised institutions subject to the proposed rule. Institutions facing an LCR shortfall have three options to meet the minimum LCR standard. They may either (1) increase their holdings of high quality liquid assets to increase the numerator of the LCR, (2) decrease the denominator of the LCR by decreasing their outflows, or (3) decrease the denominator by adjusting assets and liabilities to increase their inflows. Of course, they may also elect to meet the LCR standard by pursuing some combination of the three options.

Data from the QIS for the fourth quarter of 2012 suggests that there is currently a shortfall of approximately $151 billion among OCC-supervised institutions participating in the QIS. OCC-supervised institutions participating in the QIS account for approximately 90 percent of the assets of all OCC-supervised institutions that we estimate may be subject to the proposed rule. To estimate the potential shortfall among OCC-supervised institutions that are subject to the proposal but do not participate in the QIS, we apply the ratio of the shortfall to total assets across QIS participants to the total assets across nonparticipants. This method yields an additional shortfall of approximately $9 billion. Combining these two shortfall amounts results in an overall shortfall estimate of approximately $160 billion for the OCC-supervised institutions' shortfall.

In pursuing one or more of the options open to them to make up the shortfall and comply with the minimum LCR standard, we anticipate that affected institutions would have to surrender some yield to close the LCR gap. If they elect to close the gap by replacing assets that are not HQLAs with HQLAs, they would likely receive a lower rate of return on the HQLA relative to the non-HQLA. Similarly, they would likely have to pay a higher rate of interest to either reduce their outflows or increase their inflows. Although we do not know the exact size of the change in yield necessary to close the LCR gap, a recent industry report card by Standard & Poor's suggests that a recent quarter over quarter decline of 4 basis points in net interest margin at large, complex banks was due in part to an increase in HQLA to improve Basel III LCRs.[75] The median year over year overall decline was 21 basis points. Table 3 shows the estimated cost of eliminating the $160 billion LCR shortfall for a range of basis points. For the purposes of this analysis, we estimate that the cost of closing the LCR gap will be between 10 basis points and 15 basis points. As shown in table 3, this implies that our estimate of the opportunity cost of changes in the balance sheet to satisfy the requirements of the proposed rule will fall between $160 million and $241 million.

TABLE 3—LCR OPPORTUNITY COST ESTIMATES

| Basis points | Estimated LCR shortfall (In billion) | Opportunity cost to eliminate shortfall (In million) |
|---|---|---|
| 0 | $160 | $0 |
| 5 | 160 | 80 |
| 10 | 160 | 160 |
| 15 | 160 | 241 |
| 20 | 160 | 321 |
| 25 | 160 | 401 |
| 30 | 160 | 481 |

[74] *See* Basel Committee on Banking Supervision (2013), ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools,'' Bank for International Settlements, January, p. 1.

[75] *See* Standard & Poor's, RatingsDirect, ''Industry Report Card: U.S. Large, Complex Banks' Capital Markets Business Trumped Traditional Banking in the Second Quarter,'' August 8, 2013, p. 5.

In addition to opportunity costs associated with changes in the banks' balance sheets, institutions affected by the rule also face compliance costs related to the time and effort necessary to establish programs and procedures to calculate and report the LCR on a daily basis. The principal compliance costs of the proposed rule will involve the costs of establishing procedures and maintaining the programs that calculate the LCR and report the results. These efforts will also involve various recordkeeping, reporting, and training requirements.

In particular, the proposed rule would require each covered institution to:

1. Establish and maintain a system of controls, oversight, and documentation for its LCR program.
2. Establish and maintain a program to demonstrate an institutional capacity to liquidate their stock of HQLA, which requires a bank to periodically sell a portion of its HQLAs.
3. Calculate the LCR on a daily basis.
4. Establish procedures to report an LCR deficiency to the institution's primary federal supervisor.

Table 4 shows our estimates of the hours needed to complete tasks associated with establishing systems to calculate the LCR, reporting the LCR, and training staff responsible for the LCR. In developing these estimates, we consider the requirements of the proposed rule and the extent to which these requirements extend current business practices. Because liquidity measurement and management are already integral components of a bank's ongoing operations, all institutions affected by the proposed rule already engage in some sort of liquidity measurement activity. Thus, our hour estimates reflect the additional time necessary to build upon current internal practices.[76] As shown in table 4, we estimate that financial institutions covered by the proposed rule will spend approximately 2,760 hours during the first year the rule is in effect. Because most of these costs reflect start-up costs associated with the introduction of systems to collect and process the data needed to calculate the LCR, we estimate that in subsequent years, after LCR systems are in place, annual compliance hours will taper off to 800 hours per year.

Table 5 shows our overall operational cost estimate for the proposed rule. This estimate is the product of our estimate of the hours required per institution, our estimate of the number of institutions affected by the rule, and an estimate of hourly wages. To estimate hours necessary per activity, we estimate the number of employees each activity is likely to need and the number of days necessary to assess, implement, and perfect the required activity. To estimate hourly wages, we reviewed data from May 2012 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the proposed rule, we use $92 per hour, which is based on the average of the 90th percentile for seven occupations (i.e., accountants and auditors, compliance officers, financial analysts, lawyers, management occupations, software developers, and statisticians) plus an additional 33 percent to cover inflation and private sector benefits.[77]

As shown in table 5, we estimate that the overall operational costs of the proposed rule in the first year of implementation will be approximately $5.3 million. Eliminating start-up costs after the first year, we expect annual operational costs in subsequent years to be approximately $2.0 million. We do not expect the OCC to incur any material costs as a result of the proposed rule. Combining our opportunity cost estimates (between $160 million and $241 million) and our operational cost estimate ($5.3 million) results in our overall cost estimate of between $165 million and $246 million for the proposed LCR rule. This estimate exceeds the threshold for a significant rule under the OCC's Unfunded Mandates Reform Act (UMRA) procedures.

TABLE 4—ESTIMATED ANNUAL HOURS FOR LCR CALCULATION

| Activity | Estimated start-up hours per institution | Estimated ongoing hours per institution |
|---|---|---|
| Develop and maintain systems for LCR program | 2,400 | 520 |
| Daily internal reporting of LCR | 260 | 260 |
| Training | 100 | 20 |
| Total | 2,760 | 800 |

TABLE 5—ESTIMATED OPERATIONAL COSTS FOR LCR PROPOSAL

| Number of covered OCC institutions | Estimated hours per institution | Estimated cost per institution | Estimated total operational costs |
|---|---|---|---|
| 21 | 2,760 | $253,920 | $5,332,320 |

Potential Costs

In addition to the anticipated operational and opportunity costs described earlier, the introduction of an LCR as described in the proposed rule could also affect some broader markets. In this section we list some aspects of the proposed rule that we do not expect to carry substantial direct costs, but under some circumstances, could affect the intended outcome of the proposed rule. We will look to comment letters to see if any of these considerations warrant a more specific inclusion in our

[76] For instance, certain operational requirements, especially with respect to demonstrating the liquidity of an institution's HQLA portfolio, could further increase operational costs if these requirements do not reflect current business practices. We do not include these potential costs in our current estimate, and we will look to comment letters especially with respect to this potential cost for information regarding deviation from current business practices.

[77] According to BLS' employer costs of employee benefits data, thirty percent represents the average private sector costs of employee benefits.

analysis of the final rule. These potential costs include:

1. *Potential problems from liquidity hoarding:* The proposed rule increases the potential for liquidity hoarding among covered institutions, especially during a crisis. To the extent that this possibility emerges as a significant concern among comment letters, an alternative proposal that allows the LCR to fall within a range of 90–100 percent could alleviate some potential for hoarding. The study by van den End and Kruidhof (2013) suggest several possible policy responses to increasingly severe liquidity shocks. These policy responses include (1) reducing the minimum level of the LCR, (2) widening the LCR buffer definition to include more assets, and (3) acknowledge central bank funding in the LCR denominator. They also point out that in the most severe liquidity stress scenarios, the lender of last resort may still need to rescue the financial system. In the event of a liquidity crisis, Diamond and Dybvig (1983) suggest that the discount window or expanding deposit insurance on either a temporary or permanent basis are tools that can help prevent bank runs.

2. *No LCR reporting requirement in the proposal:* While the LCR proposal does not include a reporting requirement, the agencies plan to do so in the future. Any such reporting requirement will be published for notice and comment. One of the principal benefits of the proposed rule is the introduction of a liquidity risk measurement that is consistent across time and across covered institutions. Knowledge of the LCR and its components across institutions makes the LCR an important supervisory tool and a lack of a standardized reporting requirement would mean a significant loss of the benefits of the proposal. For instance, a decrease in the LCR may occur because of changes in one or more of its three components: a decrease in HQLA, an increase in outflow, or a decrease in inflow. It is important for bank supervisors and the lender of last resort to know which element is changing. Bank supervisors also need to know if the change in the LCR is idiosyncratic or systemic. In particular, bank supervisors should know the number of banks reacting to the liquidity shock and the extent of these reactions to help determine the appropriate policy response, e.g., adjusting LCR requirements, discount window lending, expansion of deposit insurance coverage, or asset purchases. Furthermore, the current LCR formula is not likely to be a static formula, and banking supervisors will need information on the behavior of components in the LCR to calibrate it and update it over time.

3. *Public disclosure:* While it is important for bank supervisors to be well informed regarding changes in the LCR and its components, the likelihood of liquidity hoarding increases if banks are required to publicly disclose their LCR. Thus, it is appropriate that the proposed rule does not include a public disclosure requirement, though there may be some public disclosure at the bank holding company level.

4. *Temporary Gaming Opportunity:* The absence of a Net Stable Funding Ratio (NSFR) requirement creates some opportunity to game the LCR with maturity dates.

5. *Challenges to LCR Calibration:* The components of the LCR tend to focus on the behavior of assets in the most recent financial crisis and may not capture asset performance during the next liquidity crisis, and the focus of the LCR should be on future liquidity events.

6. *HQLA Designation Should Enhance Liquidity:* Including an asset in eligible HQLA will tend to increase the liquidity of that particular asset, except under stress conditions when there may be hoarding. Similarly, excluding assets from HQLA will tend to decrease the liquidity of those assets.

7. *Potential for additional operational costs:* Certain operational requirements, especially with respect to demonstrating the liquidity of an institution's HQLA portfolio, could further increase operational costs if these requirements do not reflect current business practices. We will look to comment letters especially with respect to this potential cost for information regarding deviation from current business practices.

*Comparison Between the Proposed Rule and the Baseline*

Under current rules, banks are subject to a general liquidity risk management requirement captured as part of the CAMELS rating system. The CAMELS rating system examines capital adequacy, asset quality, management quality, earnings, liquidity, and sensitivity to market risk. According to the *Comptroller's Handbook,* the liquidity component of this rating system requires banks to have a sound understanding of the following seven factors affecting a bank's liquidity risk.

1. Projected funding sources and needs under a variety of market conditions.

2. Net cash flow and liquid asset positions given planned and unplanned balance sheet changes.

3. Projected borrowing capacity under stable conditions and under adverse scenarios of varying severity and duration.

4. Highly liquid asset (which is currently defined as U.S. Treasury and Agency securities and excess reserves at the Federal Reserve) and collateral position, including the eligibility and marketability of such assets under a variety of market environments.

5. Vulnerability to rollover risk, which is the risk that a bank is unable to renew or replace funds at reasonable costs when they mature or otherwise come due.

6. Funding requirements for unfunded commitments over various time horizons.

7. Projected funding costs, as well as earnings and capital positions under varying rate scenarios and market conditions.

Under the baseline scenario, liquidity requirements incorporated in the CAMELS rating process and the Comptroller's Handbook on liquidity would continue to apply. Thus, under the baseline, institutions affected by the proposed rule would not have to calculate and report the LCR, and the banks would incur no additional costs related to liquidity risk measurement and management. Under the baseline, however, there would also be no added benefits related to the introduction of a consistent measure of liquidity.

*Comparison Between the Proposed Rule and Alternatives*

With respect to OCC-supervised institutions, the proposed rule would apply to 21 national banks or federal savings associations that are subject to the advanced approaches risk-based capital rules and their subsidiary depository institutions with $10 billion or more in total consolidated assets. For our feasible alternatives, we consider applying the proposed rule using criteria other than use of the advanced approaches threshold. In particular, we consider the impact of the proposal if (1) the rule only applied to institutions designated as global systemically important banks (G–SIBs) and their subsidiary depository institutions with $10 billion or more in total consolidated assets, and (2) the rule applied to all depository institutions with $10 billion or more in total assets.

The first alternative considers applying the LCR to U.S. bank or financial holding companies identified in November 2012, as global systemically important banking organizations by the Basel Committee on Banking Supervision. This implies that the U.S. banking organizations that would be subject to the proposed rule are Citigroup Inc., JP Morgan Chase &

Co., Bank of America Corporation, The Bank of New York Mellon Corporation, Goldman Sachs Group, Inc., Morgan Stanley, State Street Corporation, and Wells Fargo & Company. Together with their insured depository institution subsidiaries also covered by the proposed rule, 12 OCC-supervised banks would be subject to the proposal.

Applying the same methodology as before, we estimate that the LCR shortfall for OCC-supervised G–SIBS would be approximately $104 billion, which yields an opportunity cost estimate of between $104 million and $157 million. This opportunity cost estimate again assumes a 10–15 basis point cost to the balance sheet adjustment. Applying the same operational cost estimate as before to the 12 OCC institutions subject to the proposal under the first alternative scenario, results in an operational cost estimate of $3.0 million. Combining opportunity and operational costs provides a total cost estimate of between $107 million and $160 million under the first alternative.

The second alternative considers applying the LCR to all U.S. banks with total assets of $10 billion or more. This size threshold would increase the number of OCC-supervised banks to 59, and the estimated LCR shortfall would increase to $179 billion. The opportunity cost estimate would then be between $179 million and $269 million. The operational cost estimate would increase to $15.0 million across the 59 institutions. Thus, the overall cost estimate under the second alternative would be between $194 million and $284 million.

*The Unfunded Mandates Reform Act (UMRA) Conclusion*

UMRA requires federal agencies to assess the effects of federal regulatory actions on State, local, and tribal governments and the private sector. As required by the UMRA, our review considers whether the mandates imposed by the rule may result in an expenditure of approximately $141 million or more annually by state, local, and tribal governments, or by the private sector.[78] Our estimate of the total cost is between $165 million and $246 million per year. We conclude that the proposed rule will result in private sector costs that exceed the UMRA threshold for a significant rule.[79]

Other than the aforementioned costs to banking organizations affected by the proposed rule, we do not anticipate any disproportionate effects upon any particular regions of the United States or particular State, local, or tribal governments, or urban or rural communities. We do not expect an increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies. Nor do we expect this proposed rule to have a significant adverse effect on economic growth, competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

Text of the Proposed Common Rules (All Agencies)

The text of the proposed common rules appears below:

**PART [INSERT PART]—LIQUIDITY RISK MEASUREMENT, STANDARDS AND MONITORING**

Subpart A General Provisions
§ __.1 Purpose and applicability.
§ __.2 Reservation of authority.
§ __.3 Definitions.
§ __.4 Certain operational requirements.
Subpart B Liquidity Coverage Ratio
§ __.10 Liquidity coverage ratio.
Subpart C High-Quality Liquid Assets
§ __.20 High-Quality Liquid Asset Criteria.
§ __.21 High-Quality Liquid Asset Amount.
Subpart D Total Net Cash Outflow
§ __.30 Total net cash outflow amount.
§ __.31 Determining maturity.
§ __.32 Outflow amounts.
§ __.33 Inflow amounts.
Subpart E Liquidity Coverage Shortfall
§ __.40 Liquidity coverage shortfall: supervisory framework.
Subpart F Transitions
§ __.50 Transitions.

**Text of Common Rule**

**Subpart A—General Provisions**

*§ __.1 Purpose and applicability.*

(a) *Purpose.* This part establishes a minimum liquidity standard and disclosure requirements for certain [BANK]s, as set forth herein.

(b) *Applicability.* (1) A [BANK] is subject to the minimum liquidity standard and other requirements of this part if:

(i) It has consolidated total assets equal to $250 billion or more, as reported on the most recent year-end [REGULATORY REPORT];

(ii) It has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a depository institution that is a consolidated subsidiary of a company described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section and has consolidated total assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income; or

(iv) The [AGENCY] has determined that application of this part is appropriate in light of the [BANK]'s asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(3) A [BANK] subject to a minimum liquidity standard under this part shall remain subject until the [AGENCY] determines in writing that application of this part to the [BANK] is not appropriate in light of the [BANK]'s asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(4) In making a determination under paragraphs (b)(1)(iv) or (3) of this section, the [AGENCY] will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in [12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)].

**§ __.2 Reservation of authority.**

(a) The [AGENCY] may require a [BANK] to hold an amount of high-quality liquid assets (HQLA) greater than otherwise required under this part, or to take any other measure to improve the [BANK]'s liquidity risk profile, if the [AGENCY] determines that the [BANK]'s liquidity requirements as calculated under this part are not commensurate with the [BANK]'s liquidity risks. In making determinations under this section, the [AGENCY] will apply notice and response procedures as set forth in [12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)].

(b) Nothing in this part limits the authority of the [AGENCY] under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

[78] UMRA's aggregate expenditure threshold to determine the significance of regulatory actions is $100 million or more adjusted annually for inflation. Using the GDP deflator published by the Bureau of Economic Analysis, we apply the ratio of the 2012 GDP deflator to the 1995 deflator and multiply by $100 million to arrive at our inflation adjusted UMRA threshold of approximately $141 million.

[79] UMRA describes costs as expenditures necessary to comply with federal private sector mandates, and could thus be interpreted to exclude opportunity costs. Our estimate of direct expenditures (excluding opportunity costs) is approximately $7 million per year.

**§ __.3 Definitions.**

For the purposes of this part:

*Affiliated depository institution* means with respect to a [BANK] that is a depository institution, another depository institution that is a consolidated subsidiary of a bank holding company or savings and loan holding company of which the [BANK] is also a consolidated subsidiary.

*Asset exchange* means a transaction that requires the counterparties to exchange non-cash assets at a future date. Asset exchanges do not include secured funding and secured lending transactions.

*Bank holding company* is defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*).

*Brokered deposit* means any deposit held at the [BANK] that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)), and includes a reciprocal brokered deposit and a brokered sweep deposit.

*Brokered sweep deposit* means a deposit held at the [BANK] by a customer or counterparty through a contractual feature that automatically transfers to the [BANK] from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

*Calculation date* means any date on which a [BANK] calculates its liquidity coverage ratio under § __.10.

*Client pool security* means a security that is owned by a customer of the [BANK] and is not an asset of the [BANK] regardless of a [BANK]'s hypothecation rights to the security.

*Committed* means, with respect to a credit facility or liquidity facility, that under the terms of the legally binding agreement governing the facility:

(1) The [BANK] may not refuse to extend credit or funding under the facility; or

(2) The [BANK] may refuse to extend credit under the facility (to the extent permitted under applicable law) only upon the satisfaction or occurrence of one or more specified conditions not including change in financial condition of the borrower, customary notice, or administrative conditions.

*Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

*Consolidated subsidiary* means a company that is consolidated on a [BANK]'s balance sheet under GAAP.

*Covered depository institution holding company* means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1842(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company; or

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph 3(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board.

*Covered nonbank company* means a company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect (designated company) other than:

(1) A designated company that is an insurance underwriting company; or

(2)(i) A designated company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph 2(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board.

*Credit facility* means a legally binding agreement to extend funds if requested at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes. Credit facilities do not include facilities extended expressly for the purpose of refinancing the debt of a counterparty that is otherwise unable to meet its obligations in the ordinary course of business (including through its usual sources of funding or other anticipated sources of funding). *See liquidity facility.*

*Deposit* means ''deposit'' as defined in section 3(*l*) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)) or an equivalent liability of the [BANK] in a jurisdiction outside of the United States.

*Depository institution* is defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

*Depository institution holding company* means a bank holding company or savings and loan holding company.

*Deposit insurance* means deposit insurance provided by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

*Derivative transaction* means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days. A derivative does not include any identified banking product, as that term is defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

*Dodd-Frank Act* means the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

*Foreign withdrawable reserves* means a [BANK]'s balances held by or on behalf of the [BANK] at a foreign central bank that are not subject to restrictions on the [BANK]'s ability to use the reserves.

*GAAP* means generally accepted accounting principles as used in the United States.

*High-quality liquid asset (HQLA)* means an asset that meets the requirements for level 1 liquid assets, level 2A liquid assets, or level 2B liquid assets, as set forth in subpart C of this part.

*HQLA amount* means the HQLA amount as calculated under § __.21.

*Identified company* means any company that the [AGENCY] has determined should be treated the same for the purposes of this part as a regulated financial company, investment company, non-regulated fund, pension fund, or investment adviser, based on activities similar in scope, nature, or operations to those entities.

*Individual* means a natural person, and does not include a sole proprietorship.

*Investment adviser* means a company registered with the SEC as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*), or foreign equivalents of such company.

*Investment company* means a company registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or foreign equivalents of such company.

*Liquid and readily-marketable* means, with respect to a security, that the security is traded in an active secondary market with:

(1) More than two committed market makers;

(2) A large number of non-market maker participants on both the buying and selling sides of transactions;

(3) Timely and observable market prices; and

(4) A high trading volume.

*Liquidity facility* means a legally binding agreement to extend funds at a future date to a counterparty that is made expressly for the

purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. A liquidity facility includes an agreement to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program or conduit in the event that funds are required to repay maturing asset-backed commercial paper. Liquidity facilities exclude facilities that are established solely for the purpose of general working capital, such as revolving credit facilities for general corporate or working capital purposes. *See credit facility.*

*Multilateral development bank* means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the [AGENCY] determines poses comparable credit risk.

*Non-regulated fund* means any hedge fund or private equity fund whose investment adviser is required to file SEC Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), and any consolidated subsidiary of such fund, other than a small business investment company as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*).

*Nonperforming exposure* means an exposure that is past due by more than 90 days or nonaccrual.

*Operational deposit* means unsecured wholesale funding that is required for the [BANK] to provide operational services as an independent third-party intermediary to the wholesale customer or counterparty providing the unsecured wholesale funding. In order to recognize a deposit as an operational deposit for purposes of this part, a [BANK] must comply with the requirements of § __.4(b) with respect to that deposit.

*Operational services* means the following services, provided they are performed as part of cash management, clearing, or custody services:

(1) Payment remittance;

(2) Payroll administration and control over the disbursement of funds;

(3) Transmission, reconciliation, and confirmation of payment orders;

(4) Daylight overdraft;

(5) Determination of intra-day and final settlement positions;

(6) Settlement of securities transactions;

(7) Transfer of recurring contractual payments;

(8) Client subscriptions and redemptions;

(9) Scheduled distribution of client funds;

(10) Escrow, funds transfer, stock transfer, and agency services, including payment and settlement services, payment of fees, taxes, and other expenses; and

(11) Collection and aggregation of funds.

*Pension fund* means an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1001 *et seq.*), a ''governmental plan'' (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction.

*Public sector entity* means a state, local authority, or other governmental subdivision below the sovereign entity level.

*Publicly traded* means, with respect to a security, that the security is traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the security in question.

*Qualifying master netting agreement* (1) Means a written, legally binding agreement that:

(i) Creates a single obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

(ii) Provides the [BANK] 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, 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, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to U.S. government-sponsored enterprises;

(iii) 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

(2) In order to recognize an agreement as a qualifying master netting agreement for purposes of this part, a [BANK] must comply with the requirements of § __.4(a) with respect to that agreement.

*Reciprocal brokered deposit* means a brokered deposit that a [BANK] receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the [BANK] (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

*Regulated financial company* means:

(1) A bank holding company; savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)); nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Act (12 U.S.C. 5323);

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) Web site,[1] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under this part;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462); and

(7) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (6) of this definition (e.g., a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign designated financial market utility).

(8) A regulated financial institution does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank.

[1] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

*Reserve Bank balances* means:

(1) Balances held in a master account of the [BANK] at a Federal Reserve Bank, less any balances that are attributable to any respondent of the [BANK] if the [BANK] is a correspondent for a pass-through account as defined in section 204.2(l) of Regulation D (12 CFR 204.2(l));

(2) Balances held in a master account of a correspondent of the [BANK] that are attributable to the [BANK] if the [BANK] is a respondent for a pass-through account as defined in section 204.2(l) of Regulation D;

(3) ''Excess balances'' of the [BANK] as defined in section 204.2(z) of Regulation D (12 CFR 204.2(z)) that are maintained in an ''excess balance account'' as defined in section 204.2(aa) of Regulation D (12 CFR 204.2(aa)) if the [BANK] is an excess balance account participant; and

(4) ''Term deposits'' of the [BANK] as defined in section 204.2(dd) of Regulation D (12 CFR 204.2(dd)) if such term deposits are offered and maintained pursuant to terms and conditions that:

(i) Explicitly and contractually permit such term deposits to be withdrawn upon demand prior to the expiration of the term, or that

(ii) Permit such term deposits to be pledged as collateral for term or automatically-renewing overnight advances from the Reserve Bank.

*Retail customer or counterparty* means a customer or counterparty that is:

(1) An individual; or

(2) A business customer, but solely if and to the extent that:

(i) The [BANK] manages its transactions with the business customer, including deposits, unsecured funding, and credit facility and liquidity facility transactions, in the same way it manages its transactions with individuals;

(ii) Transactions with the business customer have liquidity risk characteristics that are similar to comparable transactions with individuals; and

(iii) The total aggregate funding raised from the business customer is less than $1.5 million.

*Retail deposit* means a demand or term deposit that is placed with the [BANK] by a retail customer or counterparty, other than a brokered deposit.

*Retail mortgage* means a mortgage that is primarily secured by a first or subsequent lien on one-to-four family residential property.

*Savings and loan holding company* means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

*SEC* means the Securities and Exchange Commission.

*Secured funding transaction* means any funding transaction that gives rise to a cash obligation of the [BANK] to a counterparty that is secured under applicable law by a lien on specifically designated assets owned by the [BANK] that gives the counterparty, as holder of the lien, priority over the assets in the case of bankruptcy, insolvency, liquidation, or resolution, including repurchase transactions, loans of collateral to the [BANK]'s customers to effect short positions, and other secured loans. Secured funding transactions also include borrowings from a Federal Reserve Bank.

*Secured lending transaction* means any lending transaction that gives rise to a cash obligation of a counterparty to the [BANK] that is secured under applicable law by a lien on specifically designated assets owned by the counterparty and included in the [BANK]'s HQLA amount that gives the [BANK], as holder of the lien, priority over the assets in the case of bankruptcy, insolvency, liquidation, or resolution, including reverse repurchase transactions and securities borrowing transactions. If the specifically designated assets are not included in the [BANK]'s HQLA amount but are still held by the [BANK], then the transaction is an unsecured wholesale funding transaction. *See unsecured wholesale funding.*

*Securities Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

*Short position* means a legally binding agreement to deliver a non-cash asset to a counterparty in the future.

*Sovereign entity* means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

*Special purpose entity* means a company organized for a specific purpose, the activities of which are significantly limited to those appropriate to accomplish a specific purpose, and the structure of which is intended to isolate the credit risk of the special purpose entity.

*Stable retail deposit* means a retail deposit that is entirely covered by deposit insurance and:

(1) Is held by the depositor in a transactional account; or

(2) The depositor that holds the account has another established relationship with the [BANK] such as another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor that the [BANK] demonstrates to the satisfaction of the [AGENCY] would make deposit withdrawal highly unlikely during a liquidity stress event.

*Structured security* means a security whose cash flow characteristics depend upon one or more indices or that have imbedded forwards, options, or other derivatives or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.

*Structured transaction* means a secured transaction in which repayment of obligations and other exposures to the transaction is largely derived, directly or indirectly, from the cash flow generated by the pool of assets that secures the obligations and other exposures to the transaction.

*Two-way market* means a market where there are 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 within one day and settled at that price within a relatively short time frame conforming to trade custom.

*U.S. government-sponsored enterprise* means an entity established or chartered by the Federal government to serve public purposes specified by the United States Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States government.

*Unsecured wholesale funding* means a liability or general obligation of the [BANK] to a wholesale customer or counterparty that is not secured under applicable law by a lien on specifically designated assets owned by the [BANK], including a wholesale deposit.

*Wholesale customer or counterparty* means a customer or counterparty that is not a retail customer or counterparty.

*Wholesale deposit* means a demand or term deposit that is provided by a wholesale customer or counterparty.

**§ ___.4 Certain operational requirements.**

(a) *Qualifying Master netting agreements.* In order to recognize an agreement as a qualifying master netting agreement as defined in § __.3, a [BANK] must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of the definition of qualifying master netting agreement in § __.3; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant judicial and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in § __.3.

(b) *Operational deposits.* In order to recognize a deposit as an operational deposit as defined in § __.3:

(1) The deposit must be held pursuant to a legally binding written agreement, the termination of which is subject to a minimum 30 calendar-day notice period or significant termination costs are borne by the customer providing the deposit if a majority of the deposit balance is withdrawn from the operational deposit prior to the end of a 30 calendar-day notice period;

(2) There must not be significant volatility in the average balance of the deposit;

(3) The deposit must be held in an account designated as an operational account;

(4) The customer must hold the deposit at the [BANK] for the primary purpose of obtaining the operational services provided by the [BANK];

(5) The deposit account must not be designed to create an economic incentive for the customer to maintain excess funds therein through increased revenue, reduction in fees, or other offered economic incentives;

(6) The [BANK] must demonstrate that the deposit is empirically linked to the operational services and that it has a methodology for identifying any excess amount, which must be excluded from the operational deposit amount;

(7) The deposit must not be provided in connection with the [BANK]'s provision of

operational services to an investment company, non-regulated fund, or investment adviser; and

(8) The deposits must not be for correspondent banking arrangements pursuant to which the [BANK] (as correspondent) holds deposits owned by another depository institution bank (as respondent) and the respondent temporarily places excess funds in an overnight deposit with the [BANK].

**Subpart B—Liquidity Coverage Ratio**

**§ __.10 Liquidity coverage ratio.**

(a) *Minimum liquidity coverage ratio requirement.* Subject to the transition provisions in subpart F of this part, a [BANK] must calculate and maintain a liquidity coverage ratio that is equal to or greater than 1.0 on each business day in accordance with this part. A [BANK] must calculate its liquidity coverage ratio as of the same time on each business day (elected calculation time). The [BANK] must select this time by written notice to the [AGENCY] prior to the effective date of this rule. The [BANK] may not thereafter change its elected calculation time without written approval from the [AGENCY].

(b) *Calculation of the liquidity coverage ratio.* A [BANK]'s liquidity coverage ratio equals:

(1) The [BANK]'s HQLA amount as of the calculation date, calculated under subpart C of this part; *divided by*

(2) The [BANK]'s total net cash outflow amount as of the calculation date, calculated under subpart D of this part.

**Subpart C—High-Quality Liquid Assets**

**§ __.20 High-Quality Liquid Asset Criteria.**

(a) *Level 1 liquid assets.* An asset is a level 1 liquid asset if it meets all of the criteria set forth in paragraphs (d) and (e) of this section and is one of the following types of assets:

(1) Reserve Bank balances;

(2) Foreign withdrawable reserves;

(3) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(4) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully and explicitly guaranteed by the full faith and credit of the United States government, provided that the security is liquid and readily-marketable;

(5) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank, that is:

(i) Assigned a 0 percent risk weight under subpart D of [AGENCY CAPITAL REGULATION] as of the calculation date;

(ii) Liquid and readily-marketable;

(iii) Issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions;

(iv) Not an obligation of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, or identified company, and not an obligation of a consolidated subsidiary of any of the foregoing; and

(6) A security issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity that is not assigned a 0 percent risk weight under subpart D of [AGENCY CAPITAL REGULATION], where the sovereign entity issues the security in its own currency, the security is liquid and readily-marketable, and the [BANK] holds the security in order to meet its net cash outflows in the jurisdiction of the sovereign entity, as calculated under subpart D of [AGENCY CAPITAL REGULATION].

(b) *Level 2A liquid assets.* An asset is a level 2A liquid asset if the asset is liquid and readily-marketable, meets all of the criteria set forth in paragraphs (d) and (e) of this section, and is one of the following types of assets:

(1) A security issued by, or guaranteed as to the timely payment of principal and interest by, a U.S. government-sponsored enterprise, that is investment grade under 12 CFR part 1 as of the calculation date, provided that the claim is senior to preferred stock;

(2) A security that is issued by, or guaranteed as to the timely payment of principal and interest by, a sovereign entity or multilateral development bank that is:

(i) Not included in level 1 liquid assets;

(ii) Assigned no higher than a 20 percent risk weight under subpart D of [AGENCY CAPITAL REGULATION] as of the calculation date;

(iii) Issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions demonstrated by:

(A) The market price of the security or equivalent securities of the issuer declining by no more than 10 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the security or equivalent securities of the issuer increasing by no more than 10 percentage points during a 30 calendar-day period of significant stress; and

(iv) Not an obligation of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, or identified company, and not an obligation of a consolidated subsidiary of any of the foregoing.

(c) *Level 2B liquid assets.* An asset is a level 2B liquid asset if the asset is liquid and readily-marketable, meets all of the criteria set forth in paragraphs (d) and (e) of this section, and is one of the following types of assets:

(1) A publicly traded corporate debt security that is:

(i) Investment grade under 12 CFR part 1 as of the calculation date;

(ii) Issued by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, demonstrated by:

(A) The market price of the publicly traded corporate debt security or equivalent securities of the issuer declining by no more than 20 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the publicly traded corporate debt security or equivalent securities of the issuer increasing by no more than 20 percentage points during a 30 calendar-day period of significant stress; and

(iii) Not an obligation of a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, or identified company, and not an obligation of a consolidated subsidiary of any of the foregoing; or

(2) A publicly traded common equity share that is:

(i) Included in:

(A) The Standard & Poor's 500 Index;

(B) An index that a [BANK]'s supervisor in a foreign jurisdiction recognizes for purposes of including equity shares in level 2B liquid assets under applicable regulatory policy, if the share is held in that foreign jurisdiction; or

(C) Any other index for which the [BANK] can demonstrate to the satisfaction of the [AGENCY] that the equities represented in the index are as liquid and readily marketable as equities included in the Standard & Poor's 500 Index;

(ii) Issued in:

(A) U.S. dollars; or

(B) In the currency of a jurisdiction where the [BANK] operates and the [BANK] holds the common equity share in order to cover its net cash outflows in that jurisdiction, as calculated under subpart D of this part;

(iii) Issued by an entity whose publicly traded common equity shares have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, demonstrated by:

(A) The market price of the security or equivalent securities of the issuer declining by no more than 40 percent during a 30 calendar-day period of significant stress, or

(B) The market haircut demanded by counterparties to securities borrowing and lending transactions that are collateralized by the publicly traded common equity shares or equivalent securities of the issuer increasing by no more than 40 percentage points, during a 30 calendar day period of significant stress;

(iv) Not issued by a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, or identified company, and not issued by a consolidated subsidiary of any of the foregoing;

(v) If held by a depository institution, is not acquired in satisfaction of a debt previously contracted (DPC); and

(vi) If held by a consolidated subsidiary of a depository institution, the depository institution can include the publicly traded common equity share in its level 2B liquid assets only if the share is held to cover net cash outflows of the depository institution's consolidated subsidiary, as calculated by the [BANK] under this part.

(d) *Operational requirements for HQLA.* With respect to each asset that a [BANK] includes in its HQLA amount, a [BANK] must meet all of the following operational requirements:

(1) The [BANK] must have the operational capability to monetize the HQLA by:

(i) Implementing and maintaining appropriate procedures and systems to monetize any HQLA at any time in accordance with relevant standard settlement periods and procedures; and

(ii) Periodically monetize a sample of HQLA that reasonably reflects the composition of the [BANK]'s HQLA amount, including with respect to asset type, maturity, and counterparty characteristics;

(2) The [BANK] must implement policies that require all HQLA to be under the control of the management function in the [BANK] that is charged with managing liquidity risk, and this management function evidences its control over the HQLA by either:

(i) Segregating the assets from other assets, with the sole intent to use the assets as a source of liquidity; or

(ii) Demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business risk or management strategy of the [BANK];

(3) The [BANK] must include in its total net cash outflow amount under subpart D of this part the amount of cash outflows that would result from the termination of any specific transaction hedging HQLA included in its HQLA amount; and

(4) The [BANK] must implement and maintain policies and procedures that determine the composition of the assets in its HQLA amount on a daily basis, by:

(i) Identifying where its HQLA is held by legal entity, geographical location, currency, custodial or bank account, or other relevant identifying factor as of the calculation date;

(ii) Determining HQLA included in the [BANK]'s HQLA amount meet the criteria set forth in this section; and

(iii) Ensuring the appropriate diversification of the assets included in the [BANK]'s HQLA amount by asset type, counterparty, issuer, currency, borrowing capacity, or other factors associated with the liquidity risk of the assets.

(e) *Generally applicable criteria for HQLA.* Assets that a [BANK] includes in its HQLA amount must meet all of the following criteria:

(1) The assets are unencumbered in accordance with the following criteria:

(i) The assets are free of legal, regulatory, contractual, or other restrictions on the ability of the [BANK] to monetize the asset; and

(ii) The assets are not pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, except that the assets may be pledged to a central bank or a U.S. government-sponsored enterprise if potential credit secured by the assets is not currently extended to the [BANK] or its consolidated subsidiaries.

(2) The asset is not:

(i) A client pool security held in a segregated account; or

(ii) Cash received from a secured funding transaction involving client pool securities that were held in a segregated account.

(3) For HQLA held in a legal entity that is a U.S. consolidated subsidiary of a [BANK]:

(i) If the U.S. consolidated subsidiary is subject to a minimum liquidity standard under this part, the [BANK] may include the assets in its HQLA amount up to:

(A) The amount of net cash outflows of the U.S. consolidated subsidiary calculated by the U.S. consolidated subsidiary for its own minimum liquidity standard under this part; plus

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223);

(ii) If the U.S. consolidated subsidiary is not subject to a minimum liquidity standard under this part, the [BANK] may include the assets in its HQLA amount up to:

(A) The amount of the net cash outflows of the U.S. consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the [BANK] for the [BANK]'s minimum liquidity standard under this part; plus

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223); and

(4) For HQLA held by a consolidated subsidiary of the [BANK] that is organized under the laws of a foreign jurisdiction, the [BANK] may only include the assets in its HQLA amount up to:

(i) The amount of net cash outflows of the consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the [BANK] for the [BANK]'s minimum liquidity standard under this part; plus

(ii) Any additional amount of assets that are available for transfer to the top-tier [BANK] during times of stress without statutory, regulatory, contractual, or supervisory restrictions.

(5) The [BANK] must not include in its HQLA amount any assets, or HQLA generated from an asset, that it received under a rehypothecation right if the beneficial owner has a contractual right to withdraw the assets without remuneration at any time during the 30 calendar days following the calculation date;

(6) The [BANK] has not designated the assets to cover operational costs.

(f) *Maintenance of U.S. HQLA.* A [BANK] is generally expected to maintain in the United States an amount and type of HQLA that is sufficient to meet its total net cash outflow amount in the United States under subpart D of this part.

**§ __.21 High-Quality Liquid Asset Amount.**

(a) *Calculation of the HQLA amount.* As of the calculation date, a [BANK]'s HQLA amount equals:

(1) The level 1 liquid asset amount; plus

(2) The level 2A liquid asset amount; plus

(3) The level 2B liquid asset amount; minus

(4) The greater of:

(i) The unadjusted excess HQLA amount; or

(ii) The adjusted excess HQLA amount.

(b) *Calculation of liquid asset amounts.* (1) *Level 1 liquid asset amount.* The level 1 liquid asset amount equals the fair value (as determined under GAAP) of all level 1 liquid assets held by the [BANK] as of the calculation date, less required reserves under section 204.4 of Regulation D (12 CFR 204.4).

(2) *Level 2A liquid asset amount.* The level 2A liquid asset amount equals 85 percent of the fair value (as determined under GAAP) of all level 2A liquid assets held by the [BANK] as of the calculation date.

(3) *Level 2B liquid asset amount.* The level 2B liquid asset amount equals 50 percent of the fair value (as determined under GAAP) of all level 2B liquid assets held by the [BANK] as of the calculation date.

(c) *Calculation of the unadjusted excess HQLA amount.* As of the calculation date, the unadjusted excess HQLA amount equals:

(1) The level 2 cap excess amount; plus

(2) The level 2B cap excess amount.

(d) *Calculation of the level 2 cap excess amount.* As of the calculation date, the level 2 cap excess amount equals the greater of:

(1) The level 2A liquid asset amount plus the level 2B liquid asset amount minus 0.6667 times the level 1 liquid asset amount; or

(2) 0.

(e) *Calculation of the level 2B cap excess amount.* As of the calculation date, the level 2B excess amount equals the greater of:

(1) The level 2B liquid asset amount minus the level 2 cap excess amount minus 0.1765 times the sum of the level 1 liquid asset amount and the level 2A liquid asset amount; or

(2) 0.

(f) *Calculation of adjusted liquid asset amounts.* (1) *Adjusted level 1 liquid asset amount.* A [BANK]'s adjusted level 1 liquid asset amount equals the fair value (as determined under GAAP) of all level 1 liquid assets that would be held by the [BANK] upon the unwind of any secured funding transaction, secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date and where the [BANK] and the counterparty exchange HQLA.

(2) *Adjusted level 2A liquid asset amount.* A [BANK]'s adjusted level 2A liquid asset amount equals 85 percent of the fair value (as determined under GAAP) of all level 2A liquid assets that would be held by the [BANK] upon the unwind of any secured funding transaction, secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date and where the [BANK] and the counterparty exchange HQLA.

(3) *Adjusted level 2B liquid asset amount.* A [BANK]'s adjusted level 2B liquid asset amount equals 50 percent of the fair value (as determined under GAAP) of all level 2B liquid assets that would be held by the [BANK] upon the unwind of any secured funding transaction, secured lending transaction, asset exchange, or collateralized derivatives transaction that matures within 30 calendar days of the calculation date and where the [BANK] and the counterparty exchange HQLA.

(g) *Calculation of the adjusted excess HQLA amount.* As of the calculation date, the adjusted excess HQLA amount equals:

(1) The adjusted level 2 cap excess amount; plus

(2) The adjusted level 2B cap excess amount.

(h) *Calculation of the adjusted level 2 cap excess amount.* As of the calculation date, the adjusted level 2 cap excess amount equals the greater of:

(1) The adjusted level 2A liquid asset amount plus the adjusted level 2B liquid asset amount minus 0.6667 times the adjusted level 1 liquid asset amount; or

(2) 0.

(i) *Calculation of the adjusted level 2B excess amount.* As of the calculation date, the adjusted level 2B excess liquid asset amount equals the greater of:

(1) The adjusted level 2B liquid asset amount minus the adjusted level 2 cap excess amount minus 0.1765 times the sum of the adjusted level 1 liquid asset amount and the adjusted level 2A liquid asset amount; or

(2) 0.

**Subpart D—Total Net Cash Outflow**

**§ __.30 Total net cash outflow amount.**

As of the calculation date, a [BANK]'s total net cash outflow amount equals the largest difference between cumulative inflows and cumulative outflows, as calculated for each of the next 30 calendar days after the calculation date as:

(a) The sum of the outflow amounts calculated under §§ __.32(a) through __.32(g)(2); plus

(b) The sum of the outflow amounts calculated under §§ __.32(g)(3) through __.32(l) for instruments or transactions that have no contractual maturity date; plus

(c) The sum of the outflow amounts for instruments or transactions identified in §§ __.32(g)(3) through __.32(l) that have a contractual maturity date up to and including that calendar day; less

(d) The lesser of:

(1) The sum of the inflow amounts under §§ __.33(b) through __.33(f), where the instrument or transaction has a contractual maturity date up to and including that calendar day, and

(2) 75 percent of the sum of paragraphs (a), (b), and (c) of this section as calculated for that calendar day.

**§ __.31 Determining maturity.**

(a) For purposes of calculating its liquidity coverage ratio and the components thereof under this subpart, a [BANK] shall assume an asset or transaction matures:

(1) With respect to an instrument or transaction subject to § __.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction as follows:

(i) If an investor or funds provider has an option that would reduce the maturity, the [BANK] must assume that the investor or funds provider will exercise the option at the earliest possible date;

(ii) If a [BANK] has an option that would extend the maturity of an obligation it issued, the [BANK] must assume the [BANK] will not exercise that option to extend the maturity; and

(iii) If an option is subject to a contractually defined notice period, the [BANK] must determine the earliest possible contractual maturity date regardless of the notice period.

(2) With respect to an instrument or transaction subject to § __.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction as follows:

(i) If the borrower has an option that would extend the maturity, the [BANK] must assume that the borrower will exercise the option to extend the maturity to the latest possible date;

(ii) If a [BANK] has an option that would accelerate a maturity of an instrument or transaction, the [BANK] must assume the [BANK] will not exercise the option to accelerate the maturity; and

(iii) If an option is subject to a contractually defined notice period, the [BANK] must determine the latest possible contractual maturity date based on the borrower using the entire notice period.

(b) [Reserved]

**§ __.32 Outflow amounts.**

(a) *Unsecured retail funding outflow amount.* A [BANK]'s unsecured retail funding outflow amount as of the calculation date includes (regardless of maturity):

(1) 3 percent of all stable retail deposits held at the [BANK];

(2) 10 percent of all other retail deposits held at the [BANK]; and

(3) 100 percent of all funding from a retail customer or counterparty that is not a retail deposit or a brokered deposit provided by a retail customer or counterparty.

(b) *Structured transaction outflow amount.* If a [BANK] is a sponsor of a structured transaction, without regard to whether the issuing entity is consolidated on the [BANK]'s balance sheet under GAAP, the structured transaction outflow amount for each structured transaction as of the calculation date is the greater of:

(1) 100 percent of the amount of all debt obligations of the issuing entity that mature 30 calendar days or less from such calculation date and all commitments made by the issuing entity to purchase assets within 30 calendar days or less from such calculation date; and

(2) The maximum contractual amount of funding the [BANK] may be required to provide to the issuing entity 30 calendar days or less from such calculation date through a liquidity facility, a return or repurchase of assets from the issuing entity, or other funding agreement.

(c) *Net derivative cash outflow amount.* The net derivative cash outflow amount as of the calculation date is the sum of the net derivative cash outflow, if greater than zero, for each counterparty. The net derivative cash outflow for a counterparty is the sum of the payments and collateral that the [BANK] will make or deliver to the counterparty 30 calendar days or less from the calculation date under derivative transactions less, if the derivative transactions are subject to a qualifying master netting agreement, the sum of the payments and collateral that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under derivative transactions. This paragraph does not apply to forward sales of mortgage loans and any derivatives that are mortgage commitments subject to paragraph (d) of this section.

(d) *Mortgage commitment outflow amount.* The mortgage commitment outflow amount as of a calculation date is 10 percent of the amount of funds the [BANK] has contractually committed for its own origination of retail mortgages that can be drawn upon 30 calendar days or less from such calculation date.

(e) *Commitment outflow amount.* (1) A [BANK]'s commitment outflow amount as of the calculation date includes:

(i) 0 percent of the undrawn amount of all committed credit and liquidity facilities extended by a [BANK] that is a depository institution to an affiliated depository institution that is subject to a minimum liquidity standard under this part;

(ii) 5 percent of the undrawn amount of all committed credit and liquidity facilities extended by the [BANK] to retail customers or counterparties;

(iii)(A) 10 percent of the undrawn amount of all committed credit facilities; and

(B) 30 percent of the undrawn amount of all committed liquidity facilities extended by the [BANK] to a wholesale customer or counterparty that is not a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, or identified company, or to a consolidated subsidiary of any of the foregoing;

(iv) 50 percent of the undrawn amount of all committed credit and liquidity facilities extended by the [BANK] to depository institutions, depository institution holding companies, and foreign banks, excluding commitments described in paragraph (e)(1)(i) of this section;

(v)(A) 40 percent of the undrawn amount of all committed credit facilities; and

(B) 100 percent of the undrawn amount of all committed liquidity facilities extended by the [BANK] to a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, or identified company, or to a consolidated subsidiary of any of the foregoing, excluding other commitments described in paragraph (e)(1)(i) or (e)(1)(iv) of this section;

(vi) 100 percent of the undrawn amount of all committed credit and liquidity facilities extended to special purpose entities,

excluding liquidity facilities included in § _.32(b)(2); and

(vii) 100 percent of the undrawn amount of all other committed credit or liquidity facilities extended by the [BANK].

(2) For the purposes of this paragraph (e), the undrawn amount is:

(i) For a committed credit facility, the entire undrawn amount of the facility that could be drawn upon within 30 calendar days of the calculation date under the governing agreement, less the amount of level 1 liquid assets and 85 percent of the amount of level 2A liquid assets securing the facility; and

(ii) For a committed liquidity facility, the entire undrawn amount of the facility, that could be drawn upon within 30 calendar days of the calculation date under the governing agreement, less:

(A) The amount of level 1 liquid assets and level 2A liquid assets securing the portion of the facility that could be drawn upon within 30 calendar days of the calculation date under the governing agreement; and

(B) That portion of the facility that supports obligations of the [BANK]'s customer that do not mature 30 calendar days or less from such calculation date. If facilities have aspects of both credit and liquidity facilities, the facility must be classified as a liquidity facility.

(3) For the purposes of this paragraph (e), the amount of level 1 liquid assets and level 2A liquid assets securing a committed credit or liquidity facility is the fair value (as determined under GAAP) of level 1 liquid assets and 85 percent of the fair value (as determined under GAAP) of level 2A liquid assets that are required to be posted as collateral by the counterparty to secure the facility, provided that the following conditions are met as of the calculation date and for the 30 calendar days following such calculation date:

(i) The assets pledged meet the criteria for level 1 liquid assets or level 2A liquid assets in § __.20; and

(ii) The [BANK] has not included the assets in its HQLA amount under subpart C of this part.

(f) *Collateral outflow amount.* The collateral outflow amount as of the calculation date includes:

(1) *Changes in financial condition.* 100 percent of all additional amounts of collateral the [BANK] could be contractually required to post or to fund under the terms of any transaction as a result of a change in the [BANK]'s financial condition.

(2) *Potential valuation changes.* 20 percent of the fair value (as determined under GAAP) of any collateral posted to a counterparty by the [BANK] that is not a level 1 liquid asset.

(3) *Excess collateral.* 100 percent of the fair value (as determined under GAAP) of collateral that:

(i) The [BANK] may be required by contract to return to a counterparty because the collateral posted to the [BANK] exceeds the current collateral requirement of the counterparty under the governing contract;

(ii) Is not segregated from the [BANK]'s other assets; and

(iii) Is not already excluded from the [BANK]'s HQLA amount under § __.20(e)(5).

(4) *Contractually required collateral.* 100 percent of the fair value (as determined under GAAP) of collateral that the [BANK] is contractually required to post to a counterparty and, as of such calculation date, the [BANK] has not yet posted;

(5) *Collateral substitution.* (i) 0 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 1 liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that qualify as level 1 liquid assets without the consent of the [BANK];

(ii) 15 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 1 liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that qualify as level 2A liquid assets without the consent of the [BANK];

(iii) 50 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 1 liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that qualify as level 2B liquid assets without the consent of the [BANK];

(iv) 100 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 1 liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that do not qualify as HQLA without the consent of the [BANK];

(v) 0 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 2A liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that qualify as level 1 or level 2A liquid assets without the consent of the [BANK];

(vi) 35 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 2A liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that qualify as level 2B liquid assets without the consent of the [BANK];

(vii) 85 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 2A liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that do not qualify as HQLA without the consent of the [BANK];

(viii) 0 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 2B liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that qualify as HQLA without the consent of the [BANK];

(ix) 50 percent of the fair value of collateral posted to the [BANK] by a counterparty that the [BANK] includes in its HQLA amount as level 2B liquid assets, where under the contract governing the transaction the counterparty may replace the posted collateral with assets that do not qualify as HQLA without the consent of the [BANK]; and

(6) *Derivative collateral change.* The absolute value of the largest 30-consecutive calendar day cumulative net mark-to-market collateral outflow or inflow resulting from derivative transactions realized during the preceding 24 months.

(g) *Brokered deposit outflow amount for retail customers or counterparties.* The brokered deposit outflow amount for retail customers or counterparties as of the calculation date includes:

(1) 100 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(3) through (g)(7) of this section and which mature 30 calendar days or less from the calculation date;

(2) 10 percent of all brokered deposits at the [BANK] provided by a retail customer or counterparty that are not described in paragraphs (g)(3) through (g)(7) of this section and which mature later than 30 calendar days from the calculation date;

(3) 10 percent of all reciprocal brokered deposits at the [BANK] provided by a retail customer or counterparty, where the entire amount is covered by deposit insurance;

(4) 25 percent of all reciprocal brokered deposits at the [BANK] provided by a retail customer or counterparty, where less than the entire amount is covered by deposit insurance;

(5) 10 percent of all brokered sweep deposits at the [BANK] provided by a retail customer or counterparty:

(i) That are deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a consolidated subsidiary of the [BANK], or a company that is a consolidated subsidiary of the same top-tier company of which the [BANK] is a consolidated subsidiary; and

(ii) Where the entire amount of the deposits is covered by deposit insurance;

(6) 25 percent of all brokered_sweep deposits at the [BANK] provided by a retail customer or counterparty:

(i) That are not deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a consolidated subsidiary of the [BANK], or a company that is a consolidated subsidiary of the same top-tier company of which the [BANK] is a consolidated subsidiary; and

(ii) Where the entire amount of the deposits is covered by deposit insurance; and

(7) 40 percent of all brokered sweep deposits at the [BANK] provided by a retail customer or counterparty where less than the entire amount of the deposit balance is covered by deposit insurance.

(h) *Unsecured wholesale funding outflow amount.* A [BANK]'s unsecured wholesale funding outflow amount as of the calculation date includes:

(1) For unsecured wholesale funding that is not an operational deposit and is not

provided by a regulated financial company, investment company, non-regulated fund, pension fund, investment adviser, identified company, or consolidated subsidiary of any of the foregoing:

(i) 20 percent of all such funding (not including brokered deposits), where the entire amount is covered by deposit insurance;

(ii) 40 percent of all such funding, where:

(A) Less than the entire amount is covered by deposit insurance, or

(B) The funding is a brokered deposit;

(2) 100 percent of all unsecured wholesale funding that is not an operational deposit and is not included in paragraph (h)(1) of this section, including funding provided by a consolidated subsidiary of the [BANK], or a company that is a consolidated subsidiary of the same top-tier company of which the [BANK] is a consolidated subsidiary;

(3) 5 percent of all operational deposits, other than escrow accounts, where the entire deposit amount is covered by deposit insurance;

(4) 25 percent of all operational deposits not included in paragraph (h)(3) of this section; and

(5) 100 percent of all unsecured wholesale funding that is not otherwise described in this paragraph (h).

(i) *Debt security outflow amount.* A [BANK]'s debt security outflow amount for debt securities issued by the [BANK] that mature more than 30 calendar days after the calculation date and for which the [BANK] is the primary market maker in such debt securities includes:

(1) 3 percent of all such debt securities that are not structured securities; and

(2) 5 percent of all such debt securities that are structured securities.

(j) *Secured funding and asset exchange outflow amount.* (1) A [BANK]'s secured funding outflow amount as of the calculation date includes:

(i) 0 percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 1 liquid assets;

(ii) 15 percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 2A liquid assets;

(iii) 25 percent of all funds the [BANK] must pay pursuant to secured funding transactions with sovereign, multilateral development banks, or U.S. government-sponsored enterprises that are assigned a risk weight of 20 percent under subpart D of [AGENCY CAPITAL REGULATION], to the extent that the funds are not secured by level 1 or level 2A liquid assets;

(iv) 50 percent of all funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by level 2B liquid assets;

(v) 50 percent of all funds received from secured funding transactions that are customer short positions where the customer short positions are covered by other customers' collateral and the collateral does not consist of HQLA; and

(vi) 100 percent of all other funds the [BANK] must pay pursuant to secured funding transactions, to the extent that the funds are secured by assets that are not HQLA.

(2) A [BANK]'s asset exchange outflow amount as of the calculation date includes:

(i) 0 percent of the fair value (as determined under GAAP) of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges where the [BANK] will receive level 1 liquid assets from the asset exchange counterparty;

(ii) 15 percent of the fair value (as determined under GAAP) of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges where the [BANK] will receive level 2A liquid assets from the asset exchange counterparty;

(iii) 50 percent of the fair value (as determined under GAAP) of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges where the [BANK] will receive level 2B liquid assets from the asset exchange counterparty;

(iv) 100 percent of the fair value (as determined under GAAP) of the level 1 liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty;

(v) 0 percent of the fair value (as determined under GAAP) of the level 2A liquid assets that [BANK] must post to a counterparty pursuant to asset exchanges where [BANK] will receive level 1 or level 2A liquid assets from the asset exchange counterparty;

(vi) 35 percent of the fair value (as determined under GAAP) of the level 2A liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges where the [BANK] will receive level 2B liquid assets from the asset exchange counterparty;

(vii) 85 percent of the fair value (as determined under GAAP) of the level 2A liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty;

(viii) 0 percent of the fair value (as determined under GAAP) of the level 2B liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges where the [BANK] will receive HQLA from the asset exchange counterparty; and

(ix) 50 percent of the fair value (as determined under GAAP) of the level 2B liquid assets the [BANK] must post to a counterparty pursuant to asset exchanges where the [BANK] will receive assets that are not HQLA from the asset exchange counterparty.

(k) *Foreign central bank borrowing outflow amount.* A [BANK]'s foreign central bank borrowing outflow amount is, in a foreign jurisdiction where the [BANK] has borrowed from the jurisdiction's central bank, the outflow amount assigned to borrowings from central banks in a minimum liquidity standard established in that jurisdiction. If the foreign jurisdiction has not specified a central bank borrowing outflow amount in a minimum liquidity standard, the foreign central bank borrowing outflow amount must be calculated under paragraph (j) of this section.

(l) *Other contractual outflow amount.* A [BANK]'s other contractual outflow amount is 100 percent of funding or amounts payable by the [BANK] to counterparties under legally binding agreements that are not otherwise specified in this section.

(m) *Excluded amounts for intragroup transactions.* The outflow amounts set forth in this section do not include amounts arising out of transactions between:

(1) The [BANK] and a consolidated subsidiary of the [BANK]; or

(2) A consolidated subsidiary of the [BANK] and another consolidated subsidiary of the [BANK].

**§ __.33 Inflow amounts.**

(a) The inflows in paragraphs (b) through (g) of this section do not include:

(1) Amounts the [BANK] holds in operational deposits at other regulated financial companies;

(2) Amounts the [BANK] expects, or is contractually entitled to receive, 30 calendar days or less from the calculation date due to forward sales of mortgage loans and any derivatives that are mortgage commitments subject to § __.32(d);

(3) The amount of any credit or liquidity facilities extended to the [BANK];

(4) The amount of any asset included in the [BANK]'s HQLA amount and any amounts payable to the [BANK] with respect to those assets;

(5) Any amounts payable to the [BANK] from an obligation of a customer or counterparty that is a nonperforming asset as of the calculation date or that the [BANK] has reason to expect will become a nonperforming exposure 30 calendar days or less from the calculation date; and

(6) Amounts payable to the [BANK] on any exposure that has no contractual maturity date or that matures after 30 calendar days of the calculation date.

(b) *Net derivative cash inflow amount.* The net derivative cash inflow amount as of the calculation date is the sum of the net derivative cash inflow, if greater than zero, for each counterparty. The net derivative cash inflow amount for a counterparty is the sum of the payments and collateral that the [BANK] will receive from the counterparty 30 calendar days or less from the calculation date under derivative transactions less, if the derivative transactions are subject to a qualifying master netting agreement, the sum amount of the payments and collateral that the [BANK] will make or deliver to the counterparty 30 calendar days or less from the calculation date under derivative transactions. This paragraph does not apply to amounts excluded from inflows under paragraph (a)(2) of this section.

(c) *Retail cash inflow amount.* The retail cash inflow amount as of the calculation date includes 50 percent of all payments contractually payable to the [BANK] from retail customers or counterparties.

(d) *Unsecured wholesale cash inflow amount.* The unsecured wholesale cash inflow amount as of the calculation date includes:

(1) 100 percent of all payments contractually payable to the [BANK] from regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or identified companies, or from a consolidated subsidiary of any of the foregoing, or central banks; and

(2) 50 percent of all payments contractually payable to the [BANK] from wholesale customers or counterparties that are not regulated financial companies, investment companies, non-regulated funds, pension funds, investment advisers, or identified companies, or consolidated subsidiaries of any of the foregoing, provided that, with respect to revolving credit facilities, the amount of the existing loan is not included and the remaining undrawn balance is included in the outflow amount under § __.32(e)(1).

(e) *Securities cash inflow amount.* The securities cash inflow amount as of the calculation date includes 100 percent of all contractual payments due to the [BANK] on securities it owns that are not HQLA.

(f) *Secured lending and asset exchange cash inflow amount.* (1) A [BANK]'s secured lending cash inflow amount as of the calculation date includes:

(i) 0 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions, to the extent that the payments are secured by level 1 liquid assets, provided that the level 1 liquid assets are included in the [BANK]'s HQLA amount.

(ii) 15 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions, to the extent that the payments are secured by level 2A liquid assets, provided that the [BANK] is not using the collateral to cover any of its short positions, and provided that the level 2A liquid assets are included in the [BANK]'s HQLA amount;

(iii) 50 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions, to the extent that the payments are secured by level 2B liquid assets, provided that the [BANK] is not using the collateral to cover any of its short positions, and provided that the level 2B liquid assets are included in the [BANK]'s HQLA amount;

(iv) 100 percent of all contractual payments due to the [BANK] pursuant to secured lending transactions, to the extent that the payments are secured by assets that are not HQLA, provided that the [BANK] is not using the collateral to cover any of its short positions; and

(v) 50 percent of all contractual payments due to the [BANK] pursuant to collateralized margin loans extended to customers, provided that the loans are not secured by HQLA and the [BANK] is not using the collateral to cover any of its short positions.

(2) A [BANK]'s asset exchange inflow amount as of the calculation date includes:

(i) 0 percent of the fair value (as determined under GAAP) of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges where [BANK] must post level 1 liquid assets to the asset exchange counterparty;

(ii) 15 percent of the fair value (as determined under GAAP) of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges where the [BANK] must post level 2A liquid assets to the asset exchange counterparty;

(iii) 50 percent of the fair value (as determined under GAAP) of level 1 liquid assets the [BANK] will receive from counterparty pursuant to asset exchanges where the [BANK] must post level 2B liquid assets to the asset exchange counterparty;

(iv) 100 percent of the fair value (as determined under GAAP) of level 1 liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges where the [BANK] must post assets that are not HQLA to the asset exchange counterparty;

(v) 0 percent of the fair value (as determined under GAAP) of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges where the [BANK] must post level 1 or level 2A liquid assets to the asset exchange counterparty;

(vi) 35 percent of the fair value (as determined under GAAP) of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges where the [BANK] must post level 2B liquid assets to the asset exchange counterparty;

(vii) 85 percent of the fair value (as determined under GAAP) of level 2A liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges where the [BANK] must post assets that are not HQLA to the asset exchange counterparty;

(viii) 0 percent of the fair value (as determined under GAAP) of level 2B liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges where the [BANK] must post assets that are HQLA to the asset exchange counterparty; and

(ix) 50 percent of the fair value (as determined under GAAP) of level 2B liquid assets the [BANK] will receive from a counterparty pursuant to asset exchanges where the [BANK] must post assets that are not HQLA to the asset exchange counterparty.

(g) *Other cash inflow amounts.* A [BANK]'s inflow amount as of the calculation date includes 0 percent of other cash inflow amounts not included in paragraphs (b) through (f) of this section.

(h) *Excluded amounts for intragroup transactions.* The inflow amounts set forth in this section do not include amounts arising out of transactions between:

(1) The [BANK] and a consolidated subsidiary of the [BANK]; or

(2) A consolidated subsidiary of the [BANK] and another consolidated subsidiary of the [BANK].

**Subpart E—Liquidity Coverage Shortfall**

**§ __.40 Liquidity coverage shortfall: supervisory framework.**

(a) *Notification requirements.* A [BANK] must notify the [AGENCY] on any business day when its liquidity coverage ratio is calculated to be less than the minimum requirement in § __.10.

(b) *Liquidity Plan.* If a [BANK]'s liquidity coverage ratio is below the minimum requirement in § __.10 for three consecutive business days, or if the [AGENCY] has determined that the [BANK] is otherwise materially noncompliant with the requirements of this part, the [BANK] must promptly provide to the [AGENCY] a plan for achieving compliance with the minimum liquidity requirement in § __.10 and all other requirements of this part. The plan must include, as applicable:

(1) An assessment of the [BANK]'s liquidity position;

(2) The actions the [BANK] has taken and will take to achieve full compliance with this part, including:

(i) A plan for adjusting the [BANK]'s risk profile, risk management, and funding sources in order to achieve full compliance with this part; and

(ii) A plan for remediating any operational or management issues that contributed to noncompliance with this part;

(3) An estimated timeframe for achieving full compliance with this part; and

(4) A commitment to report to the [AGENCY] no less than weekly on progress to achieve compliance in accordance with the plan until full compliance with this part is achieved.

(c) *Supervisory and enforcement actions.* The [AGENCY] may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum liquidity coverage ratio.

**Subpart F—Transitions**

**§ __.50 Transitions.**

(a) Beginning January 1, 2015, through December 31, 2015, a [BANK] subject to a minimum liquidity standard under this part must calculate and maintain a liquidity coverage ratio on each calculation date in accordance with this part that is equal to or greater than 0.80.

(b) Beginning January 1, 2016, through December 31, 2016, a [BANK] subject to a minimum liquidity standard under this part must calculate and maintain a liquidity coverage ratio on each calculation date in accordance with this part that is equal to or greater than 0.90.

(c) On January 1, 2017, and thereafter, a [BANK] subject to subject to a minimum liquidity standard under this part must calculate and maintain a liquidity coverage ratio on each calculation date that is equal to or greater than 1.0.

## List of Subjects

*12 CFR Part 50*

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

*12 CFR Part 249*

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

*12 CFR Part 329*

Administrative practice and procedure; Banks, banking; Federal Deposit Insurance Corporation, FDIC; Liquidity; Reporting and recordkeeping requirements.

**Adoption of Proposed Common Rule**

The adoption of the proposed common rules by the agencies, as modified by the agency-specific text, is set forth below:

**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 common preamble, the OCC proposes to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as part 50 of chapter I of title 12 of the Code of Federal Regulations:

## PART 50—LIQUIDITY RISK MEASUREMENT, STANDARDS AND MONITORING

■ 1. The authority citation for part 50 is added to read as follows:

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

■ 2. Part 50 is amended by:
■ a. Removing ''[AGENCY]'' and adding ''OCC'' in its place, wherever it appears;
■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''(12 CFR part 3)'' in its place, wherever it appears;
■ c. Removing ''[BANK]'' and adding ''national bank or Federal savings association'' in its place, wherever it appears;
■ d. Removing ''[BANK]s'' and adding ''national banks and Federal savings associations'' in its place, wherever it appears;
■ e. Removing ''[BANK]'s'' and adding ''national bank's or Federal savings association's'' in its place, wherever it appears;
■ f. Removing ''[PART]'' and adding ''part'' in its place, wherever it appears;
■ g. Removing ''[REGULATORY REPORT]'' and adding ''Consolidated Reports of Condition and Income'' in its place, wherever it appears; and
■ h. Removing ''[12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)]'' and adding ''12 CFR 3.404'' in its place, wherever it appears.
■ 3. Section 50.1 is amended by:
■ a. Redesignating paragraph (b)(1)(iv) as paragraph (b)(1)(v);
■ b. Adding paragraph (b)(1)(iv);
■ c. Removing ''(b)(1)(iv)'' in paragraph (b)(4) and adding ''(b)(1)(v)'' in its place;
■ d. Removing the word ''or'' at the end of paragraph (b)(2)(i);
■ e. Removing the period at the end of paragraph (b)(2)(ii) and adding ''; or'' in its place; and
■ f. Adding paragraph (b)(2)(iii).

The additions read as follows.

**§ 50.1 Purpose and applicability.**

* * * * *

(b)* * *

(1) * * *

(iv) It is a depository institution that has consolidated total assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total assets equal to $250 billion or more, as reported on the most recent year-end FR Y–9C, or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has consolidated total assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(C) A covered depository institution holding company or depository institution that has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(D) A covered nonbank company.

* * * * *

(2) * * *

(iii) A Federal branch or agency as defined by 12 CFR 28.11.

* * * * *

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

**12 CFR CHAPTER II**

**Authority and Issuance**

For the reasons set forth in the common preamble, the Board proposes to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as part 249 of chapter II of title 12 of the Code of Federal Regulations as follows:

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

■ 4. The authority citation for part 249 shall read as follows:

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

■ 5. Part 249 is amended as set forth below:
■ a. Remove ''[AGENCY]'' and add ''Board'' in its place wherever it appears.
■ b. Remove ''[AGENCY CAPITAL REGULATION]'' and add ''Regulation Q (12 CFR part 217)'' in its place wherever it appears.
■ c. Remove ''[BANK]'' and add ''Board-regulated institution'' in its place wherever it appears.
■ d. Remove ''[BANK]s'' and add ''Board-regulated institutions'' in its place wherever it appears.
■ e. Remove ''[BANK]'s'' and add ''Board-regulated institution's'' in its place wherever it appears.
■ 6. Amend § 249.1 by:
■ a. Removing ''[REGULATORY REPORT]'' from paragraph (b)(1)(i) and adding ''FR Y–9C, or, if the Board-regulated institution is not required to report on the FR Y–9C, then its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C, or Consolidated Report of Condition and Income (Call Report), as applicable'' in its place.
■ b. Redesignating paragraph (b)(1)(iv) as paragraph (b)(1)(vi);
■ c. Adding new paragraphs (b)(1)(iv) and (b)(1)(v) and;
■ d. Revising paragraph (b)(4).

The additions and revisions read as follows:

**§ 249.1 Purpose and applicability.**

* * * * *

(b) * * *

(1) * * *

(iv) It is a covered nonbank company;

(v) It is a covered depository institution holding company that meets the criteria in § 249.51(a) but does not meet the criteria in paragraphs (b)(1)(i)

or (b)(1)(ii) of this section, and is subject to complying with the requirements of this part in accordance with subpart G of this part; or

* * * * *

(4) In making a determination under paragraphs (b)(1)(vi) or (3) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.2.

■ 7. In § 249.2, revise paragraph (a) to read as follows:

**§ 249.2 Reservation of authority.**

(a) The Board may require a Board-regulated institution to hold an amount of high quality liquid assets (HQLA) greater than otherwise required under this part, or to take any other measure to improve the Board-regulated institution's liquidity risk profile, if the Board determines that the Board-regulated institution's liquidity requirements as calculated under this part are not commensurate with the Board-regulated institution's liquidity risks. In making determinations under this section, the Board will apply, as appropriate, notice and response procedures as set forth in 12 CFR 263.2.

* * * * *

■ 8. In § 249.3, add definitions for ''Board'', ''Board-regulated institution'', and ''State member bank'' in alphabetical order, to read as follows:

**§ 249.3 Definitions.**

* * * * *

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

*Board-regulated institution* means a state member bank, covered depository institution holding company, or covered nonbank company.

* * * * *

*State member bank* means a state bank that is a member of the Federal Reserve System.

* * * * *

■ 9. Add subpart G to read as follows:

## Subpart G—Liquidity Coverage Ratio for Certain Bank Holding Companies

**§ 249.51 Applicability.**

(a) *Scope.* This subpart applies to a covered depository institution holding company domiciled in the United States that has total consolidated assets equal to $50 billion or more, based on the average of the Board-regulated institution's four most recent FR Y–9Cs (or, if a savings and loan holding company is not required to report on the FR Y–9C, based on the average of its estimated total consolidated assets for the most recent four quarters, calculated in accordance with the instructions to the FR Y–9C) and does not meet the applicability criteria set forth in § 249.1(b).

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A through F apply to covered depository institution holding companies that are subject to this subpart.

**§ 249.52 High-Quality Liquid Asset Amount.**

A covered depository institution holding company subject to this subpart must calculate its HQLA amount in accordance with subpart C of this part; provided, however, that such covered BHC must incorporate into the calculation of its HQLA amount a 21 calendar day period instead of a 30 day calendar day period and must measure 21 calendar days from a calculation date instead of 30 calendar days from a calculation date, as provided in § 249.21.

**§ 249.53 Total Net Cash Outflow.**

(a) A covered depository institution holding company subject to this subpart must calculate its cash outflows and inflows in accordance with subpart D of this part, provided, however, that such company must:

(1) Include only those outflow and inflow amounts with a contractual maturity date that are calculated for each day within the next 21 calendar days from a calculation date; and

(2) Calculate its outflow and inflow amounts for instruments or transactions that have no contractual maturity date by applying 70 percent of the applicable outflow or inflow amount as calculated under subpart D of this part to the instrument or transaction.

(b) As of a calculation date, the total net cash outflow amount of a covered depository institution subject to this subpart equals:

(1) The sum of the outflow amounts calculated under §§ __.32(a) through __.32(g)(2); *plus*

(2) The sum of the outflow amounts calculated under §§ __.32(g)(3) through __.32(l); where the instrument or transaction has no contractual maturity date; *plus*

(3) The sum of the outflow amounts under §§ __.32(g)(3) through __.32(l) where the instrument or transaction has a contractual maturity date up to and including that calendar day; *less*

(4) The lesser of:

(i) The sum of the inflow amounts under §§ __.33(b) through __.33(f), where the instrument or transaction has a contractual maturity date up to and including that calendar day, or

(ii) 75 percent of the sum of paragraphs (a), (b), and (c) of this section as calculated for that calendar day.

**Federal Deposit Insurance Corporation**

**12 CFR CHAPTER III**

**Authority and Issuance**

For the reasons set forth in the common preamble, the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations as follows:

## PART 329—LIQUIDITY RISK MEASUREMENT, STANDARDS AND MONITORING

■ 10. The authority citation for part 329 shall read as follows:

**Authority:** 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 11. Part 329 is added as set forth at the end of the common preamble.

■ 12. Part 329 is amended as set forth below:

■ a. Remove ''[INSERT PART]'' and add ''329'' in its place wherever it appears.

■ b. Remove ''[AGENCY]'' and add ''FDIC'' in its place wherever it appears.

■ c. Remove ''[AGENCY CAPITAL REGULATION]'' and add ''12 CFR part 324'' in its place wherever it appears.

■ d. Remove ''A [BANK]'' and add ''An FDIC-supervised institution'' in its place wherever it appears.

■ e. Remove ''a [BANK]'' and add ''an FDIC-supervised institution'' in its place wherever it appears.

■ f. Remove ''[BANK]'' and add ''FDIC-supervised institution'' in its place wherever it appears.

■ g. Remove ''[REGULATORY REPORT]'' and add ''Consolidated Report of Condition and Income'' in its place wherever it appears.

■ h. Remove ''[12 CFR 3.404 (OCC), 12 CFR 263.202 (Board), and 12 CFR 324.5 (FDIC)]'' and add ''12 CFR 324.5'' in its place wherever it appears.

■ 13. In § 329.1, revise paragraph (b)(1)(iii) to read as follows:

**§ 329.1 Purpose and applicability.**

* * * * *

(b) * * *

(1) * * *

(iii) It is a depository institution that has consolidated total assets equal to $10 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income and is a consolidated subsidiary of one of the following:

(A) A covered depository institution holding company that has total assets equal to $250 billion or more, as reported on the most recent year-end FR

Y–9C, or, if the covered depository institution holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C;

(B) A depository institution that has consolidated total assets equal to $250 billion or more, as reported on the most recent year-end Consolidated Report of Condition and Income;

(C) A covered depository institution holding company or depository institution that has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(D) A covered nonbank company.

* * * * *

■ 14. In § 329.3, add definitions for ''FDIC'' and ''FDIC-supervised institution'' in alphabetical order, to read as follows:

**§ 329.3 Definitions.**

* * * * *

*FDIC* means the Federal Deposit Insurance Corporation.

*FDIC-supervised institution* means any state nonmember bank or state savings association.

* * * * *

Date: October 30, 2013.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, November 6, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 30th day of October, 2013.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2013–27082 Filed 11–27–13; 8:45 am]

BILLING CODE P

# FEDERAL REGISTER

Vol. 78 Friday,

No. 230 November 29, 2013


Part V

## Department of Commerce

United States Patent and Trademark Office

37 CFR Parts 1, 3, 5, et al.

Changes To Implement the Hague Agreement Concerning International Registration of Industrial Designs; Proposed Rule

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**37 CFR Parts 1, 3, 5 and 11**

**[Docket No. PTO–P–2013–0025]**

**RIN 0651–AC87**

## Changes To Implement the Hague Agreement Concerning International Registration of Industrial Designs

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Title I of the Patent Law Treaties Implementation Act of 2012 (''PLTIA'') amends the patent laws to implement the provisions of the 1999 Geneva Act of the Hague Agreement Concerning International Registration of Industrial Designs (''Hague Agreement'') and is to take effect on the entry into force of the Hague Agreement with respect to the United States. The Hague Agreement provides that an applicant is entitled to apply for design protection in Hague Agreement member countries and with intergovernmental organizations by filing a single, standardized international design application in a single language. The United States Patent and Trademark Office (USPTO or Office) proposes changes to the rules of practice to implement title I of the PLTIA.

**DATES:** *Comment Deadline Date:* Written comments must be received on or before January 28, 2014.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to: *AC87.comments@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, marked to the attention of Boris Milef, Senior PCT Legal Examiner, Office of PCT Legal Administration.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because the Office may easily share such comments with the public. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*) and at *http://www.regulations.gov.* Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Boris Milef, Senior PCT Legal Examiner, Office of PCT Legal Administration, at (571) 272–3288.

**SUPPLEMENTARY INFORMATION:**

*Executive Summary: Purpose:* The Hague Agreement provides that an applicant is entitled to apply for design protection in all member countries and with intergovernmental organizations by filing a single, standardized international design application in a single language. Title I of the PLTIA amends Title 35 to implement the provisions of the Hague Agreement and is to take effect on the entry into force of the Hague Agreement with respect to the United States. This notice proposes changes to the relevant rules of practice in Title 37, Chapter I of the Code of Federal Regulations to implement title I of the PLTIA.

*Summary of Major Changes to U.S. Practice:* The major changes to U.S. practice in title I of the PLTIA pertain to: (1) Standardizing formal requirements for international design applications; (2) establishing the USPTO as an office through which international design applications may be filed; (3) providing a right of priority with respect to international design applications; (4) treating an international design application that designates the United States as having the same effect from its filing date as that of a national design application; (5) providing provisional rights for published international design applications that designate the United States; (6) setting the patent term for design patents issuing from both national design applications under chapter 16 and international design applications designating the United States to 15 years from the date of patent grant; (7) providing for examination by the Office of international design applications that designate the United States; and (8) permitting an applicant's failure to act within prescribed time limits in an international design application to be excused as to the United States under certain conditions.

The Office is specifically proposing to revise the rules of practice (37 CFR parts 1, 3, 5, and 11) to provide for the filing of international design applications by U.S. applicants in the USPTO as an office of indirect filing. The Office would transmit the international design application and any collected international fees to the International Bureau of the World Intellectual Property Organization (''WIPO''), subject to national security review and payment of a transmittal fee. The International Bureau would review the application for compliance with the applicable formal requirements under the Hague Agreement.

The Office also proposes to revise the rules of practice to set forth the formal requirements of an international design application, including specific content requirements where the United States is designated. Specifically, an international design application designating the United States would have to identify the inventor and include a claim and the inventor's oath or declaration. The proposed rules also specify that an international design application designating the United States may be refused by the Office as a designated office if the applicant is not a person qualified under 35 U.S.C. chapter 11 to be an applicant.

The Office also proposes to revise the rules of practice to provide for examination of international design applications that designate the United States. International design applications are reviewed by the International Bureau for compliance with formal requirements under the Hague Agreement. Where these requirements have been met, the International Bureau would register the industrial design in the International Register and, subsequently, publish the international registration and send a copy of the publication to each designated office. Since international registration would only occur after the International Bureau finds that the application conforms to the applicable formal requirements, examination before the Office would generally be limited to substantive matters. With certain exceptions, the Hague Agreement imposes a time period of up to 12 months from the date of publication of the international registration for an examining office to refuse an

international design application. The rules are proposed to be revised to provide for the applicability of the requirements of 35 U.S.C. chapter 16 to examination of international design applications consistent with the Hague Agreement, and to provide for the various notifications to the International Bureau required of an examining office under the Hague Agreement.

The Office is also proposing to revise the rules of practice to provide for: (1) Review of a filing date established by the International Bureau; (2) excusing an applicant's failure to act within prescribed time limits in connection with an international design application; (3) priority claims with respect to international design applications; (4) payment of fees; and (5) treatment of international design applications for national security review.

*Costs and Benefits:* This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

*Background:* The 1999 Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (''Hague Agreement''), negotiated under the auspices of WIPO, is the latest revision to the 1925 Hague Agreement Concerning the International Deposit of Industrial Designs (''1925 Agreement''). The United States is not a party to the 1925 Agreement, and did not join any of the subsequent Acts revising the 1925 Agreement, because those agreements either did not provide, or did not adequately provide, for substantive examination of international design applications by national offices. The Hague Agreement, adopted at a diplomatic conference on July 2, 1999, is the first Act that adequately provides for a system of individual review by the national offices of Contracting Parties.

In accordance with Article 28, the Hague Agreement will enter into force for the United States three months after the date that the United States deposits its instrument of ratification with the Director General of the International Bureau of WIPO or at any later date indicated in the instrument. As stated in the President's November 13, 2006, Letter of Transmittal to the Senate, the United States would not deposit its instrument of ratification until the necessary implementing legal structure has been established domestically. Treaty Doc. 109–21. Title I of the PLTIA, enacted on December 18, 2012, amended title 35 United States Code, in order to implement the Hague Agreement. See Public Law 112–211, §§ 101–103, 126 Stat. 1527, 1527–33 (2012). Its provisions are to take effect on the entry into force of the Hague Agreement with respect to the United States. These proposed rules implement title I of the PLTIA.

The main purpose of the Hague Agreement is to facilitate protection for industrial designs by allowing applicants to apply for protection in those countries and intergovernmental organizations that are Contracting Parties to the Hague Agreement by filing a single standardized application in a single language. Currently, a U.S. design applicant seeking global protection generally has to file separate design applications in each country or intergovernmental organization for which protection is sought, complying with the formal requirements imposed by each country or intergovernmental organization. The Hague Agreement simplifies the application process and reduces the costs for applicants seeking to obtain rights globally. The Hague Agreement also provides for centralized international registration of designs and renewal of registrations. The Hague Agreement imposes a time limit on a Contracting Party to refuse the effects of international registration in that Contracting Party if the conditions for the grant of protection under the law of that Contracting Party are not met.

Major provisions of the Hague Agreement as implemented by title I of the PLTIA include the following:

Article 3 of the Hague Agreement provides that ''[a]ny person that is a national of a State that is a Contracting Party or of a State member of an intergovernmental organization that is a Contracting Party, or that has a domicile, a habitual residence or a real and effective industrial or commercial establishment in the territory of a Contracting Party, shall be entitled to file an international application.'' Article 4(1)(a) provides that ''[t]he international application may be filed, at the option of the applicant, either directly with the International Bureau or through the Office of the applicant's Contracting Party.'' Article 4(2) allows ''[t]he Office of any Contracting Party [to] require that the applicant pay a transmittal fee to it, for its own benefit, in respect of any international application filed through it.''

Section 101(a) of the PLTIA adds 35 U.S.C. 382 to implement the provisions of Articles 3 and 4. 126 Stat. at 1528. Section 382(a) provides that ''[a]ny person who is a national of the United States, or has a domicile, a habitual residence, or a real and effective industrial or commercial establishment in the United States, may file an international design application by submitting to the United States Patent and Trademark Office an application in such form, together with such fees, as may be prescribed by the Director.'' *Id.* Section 382(b) requires the Office to ''perform all acts connected with the discharge of its duties under the [Hague Agreement], including the collection of international fees and the transmittal thereof to the International Bureau.'' *Id.* Transmittal of the international design application would be subject to 35 U.S.C. chapter 17 and payment of a transmittal fee. *Id.*

Article 5 of the Hague Agreement and Rule 7 of the ''Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement'' (''Hague Agreement Regulations'' or ''Regulations'') concern the contents of an international design application. Article 5(1) requires the international design application to be in one of the prescribed languages and specifies the contents required for all international design applications. Specifically, it provides that the application ''shall contain or be accompanied by (i) a request for international registration under [the Hague Agreement]; (ii) the prescribed data concerning the applicant; (iii) the prescribed number of copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international application, presented in the prescribed manner; however, where the industrial design is two-dimensional and a request for deferment of publication is made in accordance with [Article 5(5)], the international application may, instead of containing reproductions, be accompanied by the prescribed number of specimens of the industrial design; (iv) an indication of the product or products which constitute the industrial design or in relation to which the industrial design is to be used, as prescribed; (v) an indication of the designated Contracting Parties; (vi) the prescribed fees; and (vii) any other prescribed particulars.''

Article 5(2) of the Hague Agreement and Rule 11 of the Hague Agreement Regulations set forth additional mandatory contents that may be required by any Contracting Party whose Office is an Examining Office and whose law, at the time it becomes party to the Hague Agreement, so requires. Specifically, Article 5(2) provides that ''an application for the grant of protection to an industrial design [may], in order for that application to be accorded a filing date under that law'' be required to contain, any of the following elements: ''(i) indications concerning the identity of the creator of the industrial design that is the subject of that application; (ii) a

brief description of the reproduction or of the characteristic features of the industrial design that is the subject of that application; and (iii) a claim.''

Section 101(a) of the PLTIA adds 35 U.S.C. 383 to provide that, ''[i]n addition to any requirements pursuant to chapter 16, the international design application shall contain—(1) a request for international registration under the treaty; (2) an indication of the designated Contracting Parties; (3) data concerning the applicant as prescribed in the treaty and the Regulations; (4) copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international design application, presented in the number and manner prescribed in the treaty and the Regulations; (5) an indication of the product or products that constitute the industrial design or in relation to which the industrial design is to be used, as prescribed in the treaty and the Regulations; (6) the fees prescribed in the treaty and the Regulations; and (7) any other particulars prescribed in the Regulations.'' 126 Stat. at 1529–30.

Article 6 of the Hague Agreement provides a right of priority with respect to international design applications. Article 6(1) provides that ''[t]he international design application may contain a declaration claiming, under Article 4 of the Paris Convention, the priority of one or more earlier applications filed in or for any country party to that Convention or any Member of the World Trade Organization.'' Article 6(2) provides that ''[t]he international design application shall, as from its filing date and whatever may be its subsequent fate, be equivalent to a regular filing within the meaning of Article 4 of the Paris Convention.''

Section 101(a) of the PLTIA adds 35 U.S.C. 386 to provide for a right of priority with respect to international design applications. Section 386(a) provides that ''[i]n accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172, a national application shall be entitled to the right of priority based on a prior international design application that designated at least 1 country other than the United States.'' 126 Stat. at 1529. Section 386(b) provides that ''[i]n accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172 and the treaty and the Regulations, an international design application designating the United States shall be entitled to the right of priority based on a prior foreign application, a prior international application as defined in section 351(c) designating at least 1 country other than the United States, or a prior international design application designating at least 1 country other than the United States.'' *Id.* Section 386(c) provides for domestic benefit claims with respect to international design applications designating the United States in accordance with the conditions and requirements of 35 U.S.C. 120. 126 Stat. at 1529–30.

Article 7 of the Hague Agreement and Rule 12 of the Hague Agreement Regulations provide for designation fees. Under Article 7(2) and Rule 12(3), the designation fee may be an ''individual designation fee.'' Article 7(2) provides that for any Contracting Party whose Office is an Examining Office, the ''amount may be fixed by the said Contracting Party . . . for the maximum period of protection allowed by the Contracting Party concerned.'' Rule 12(3) provides that the individual designation fee may ''comprise two parts: The first part to be paid at the time of filing the international design application, and the second part to be paid at a later date which is determined in accordance with the law of the Contracting Party concerned.'' Rule 12(1) lists other fees concerning the international design application, including the basic fee and publication fee.

Article 8(1) of the Hague Agreement and Rule 14 of the Hague Agreement Regulations provide that the International Bureau will examine the international design application for compliance with the requirements of the Hague Agreement and Regulations and invite the applicant to make any required correction within a prescribed time limit. Under Article 8(2), the failure to timely comply with the invitation will result in abandonment of the application, except where the irregularity concerns a requirement under Article 5(2) or a special requirement under the Regulations, in which case the failure to timely correct will result in the application being deemed not to contain the designation of the Contracting Party concerned.

Article 9 of the Hague Agreement establishes the filing date of an international design application. Article 9(1) provides that ''[w]here the international application is filed directly with the International Bureau, the filing date shall, subject to [Article 9(3)], be the date on which the International Bureau receives the international application.'' Article 9(2) provides that ''[w]here the international application is filed through the Office of the applicant's Contracting Party, the filing date shall be determined as prescribed.'' The filing date of an international application filed with an office of indirect filing is prescribed in Rule 13(3) of the Regulations.

Article 9(3) provides that ''[w]here the international application has, on the date on which it is received by the International Bureau, an irregularity which is prescribed as an irregularity entailing a postponement of the filing date of the international application, the filing date shall be the date on which the correction of such irregularity is received by the International Bureau.'' Rule 14(1) sets forth the time limit in which the applicant is required to correct such irregularities, and Rule 14(2) sets forth the irregularities entailing postponement of the filing date of the international design application.

The PLTIA adds 35 U.S.C. 384, which provides in subsection (a) that the filing date of an international design application in the United States shall be the ''effective registration date'' subject to review under subsection (b). 126 Stat. at 1529. The term ''effective registration date'' is defined in § 381(a)(5), added by the PLTIA, as ''the date of international registration determined by the International Bureau under the treaty.'' 126 Stat. at 1528. Section 384(b) provides that ''[a]n applicant may request review by the Director of the filing date of the international design application in the United States,'' and that ''[t]he Director may determine that the filing date of the international design application in the United States is a date other than the effective registration date.'' 126 Stat. at 1529. It also authorizes the Director to ''establish procedures, including the payment of a surcharge, to review the filing date under this section.'' *Id.* Section 384(a) also provides that ''any international design application designating the United States that otherwise meets the requirements of chapter 16 may be treated as a design application under chapter 16.'' *Id.*

Article 10(1) of the Hague Agreement provides that ''[t]he International Bureau shall register each industrial design that is the subject of an international application immediately upon receipt by it of the international application or, where corrections are invited under Article 8, immediately upon receipt of the required corrections.'' Article 10(2) provides that ''[s]ubject to subparagraph (b), the date of the international registration shall be the filing date of the international application.'' Article 10(2)(b) provides that ''[w]here the international application has, on the date on which it

is received by the International Bureau, an irregularity that relates to Article 5(2), the date of the international registration shall be the date on which the correction of such irregularity is received by the International Bureau or the filing date of the international application, whichever is the later.'' Under Rule 15(2) of the Regulations, ''the international registration shall contain (i) all the data contained in the international application . . .; (ii) any reproduction of the industrial design; (iii) the date of the international registration; (iv) the number of the international registration; [and] (v) the relevant class of the International Classification, as determined by the International Bureau.''

Article 10(3)(a) of the Hague Agreement provides that ''[t]he international registration shall be published by the International Bureau.'' Under Article 10(3)(b), ''[t]he International Bureau shall send a copy of the publication of the international registration to each designated Office.''

Section 101(a) of the PLTIA adds 35 U.S.C. 390 to provide that ''[t]he publication under the treaty of an international design application designating the United States shall be deemed a publication under [35 U.S.C.] 122(b).'' 126 Stat. at 1531.

Article 10(4) of the Hague Agreement provides that the International Bureau shall, subject to Articles 10(5) and 11(4)(b), keep each international application and international registration confidential until publication. Under Article 10(5)(a), ''[t]he International Bureau shall, immediately after registration has been effected, send a copy of the international registration, along with any relevant statement, document or specimen accompanying the international application, to each Office that has notified the International Bureau that it wishes to receive such a copy and has been designated in the international application.''

Article 11 of the Hague Agreement provides for deferment of publication under certain conditions. Article 11(3) prescribes the procedure where a request for deferment is filed in an international design application designating a Contracting Party that has made a declaration under Article 11(1)(b) stating that deferment is not possible under its law.

Article 12(1) of the Hague Agreement provides that ''[t]he Office of any designated Contracting Party may, where the conditions for the grant of protection under the law of that Contracting Party are not met in respect of any or all of the industrial designs that are the subject of an international registration, refuse the effects, in part or in whole, of the international registration. . . .'' Article 12(1) further provides that ''no Office may refuse the effects, in part or in whole, of any international registration on the ground that requirements relating to the form or contents of the international application that are provided for in [the Hague Agreement] or the Regulations or are additional to, or different from, those requirements have not been satisfied under the law of the Contracting Party concerned.'' Article 12(2) provides that the refusal of the effects of an international registration shall be communicated to the International Bureau within the prescribed period and shall state the grounds on which the refusal is based. Under Rule 18(1) of the Hague Agreement Regulations, the prescribed period for sending the notification of refusal is six months from publication, or twelve months from publication where an office makes a declaration under Rule 18(1)(b). The declaration under Rule 18(1)(b) may state that the international registration shall produce the effects under Article 14(2)(a) at the latest ''at a time specified in the declaration which may be later than the date referred to in that Article but which shall not be more than six months after the said date'' or ''at a time at which protection is granted according to the law of the Contracting Party where a decision regarding the grant of protection was unintentionally not communicated within the period applicable under [Rule 18(1)(a) or (b)].'' *See* Rule 18(1)(c).

Rule 18(2) provides that the notification of refusal ''shall contain or indicate (i) the Office making the notification, (ii) the number of the international registration, (iii) all the grounds on which the refusal is based . . ., (iv) where the refusal . . . is based [on] an earlier national, regional or international application or registration, the filing date and number, the priority date (if any), the registration date and number (if available), a copy of a reproduction of the earlier industrial design (if . . . accessible to the public) and the name and address of the owner . . ., (v) where the refusal does not relate to all the industrial designs that are the subject of the international registration, those to which it relates or does not relate, (vi) whether the refusal may be subject to review or appeal . . ., and (vii) the date on which the refusal was pronounced.''

Article 12(3) of the Hague Agreement provides that ''[t]he International Bureau shall, without delay, transmit a copy of the notification of refusal to the holder,'' and that ''[t]he holder shall enjoy the same remedies as . . . if the international registration had been the subject of an application for a grant of protection under the law applicable to the Office that communicated the refusal.'' Under Article 12(4), ''[a]ny refusal may be withdrawn, in part or in whole, at any time.''

Article 13 of the Hague Agreement permits a Contracting Party to notify the Director General in a declaration, where the Contracting Party's ''law, at the time it becomes party to this Act, requires that designs [in the] application conform to a requirement of unity of design, unity of production or unity of use, . . . or that only one independent and distinct design may be claimed in a single application.''

Under Article 14(1) of the Hague Agreement, ''[t]he international registration shall, from the date of the international registration, have at least the same effect in each designated Contracting Party as a regularly filed application for the grant of protection of the industrial design under the law of that Contracting Party.''

Section 101(a) of the PLTIA adds 35 U.S.C. 385 to provide that ''[a]n international design application designating the United States shall have the effect, for all purposes, from its filing date . . . of an application for patent filed in the Patent and Trademark Office pursuant chapter 16 [of Title 35 of the United States Code].'' 126 Stat. at 1529. The PLTIA also amends 35 U.S.C. 154 to provide for provisional rights in international design applications that designate the United States. 126 Stat. at 1531–32.

Article 14(2) of the Hague Agreement provides that ''[i]n each designated Contracting Party the Office of which has not communicated a refusal in accordance with Article 12, the international registration shall have the same effect as a grant of [design protection] under the law of that Contracting Party at the latest from the date of expiration of the period allowed for it to communicate a refusal or, where a Contracting Party has made a corresponding declaration under the Regulations, at the latest at the time specified in that declaration.'' Article 14(2)(b) provides that ''[w]here the Office of a designated Contracting Party has communicated a refusal and has subsequently withdrawn, in part or in whole, that refusal, the international registration shall, to the extent that the refusal is withdrawn, have the same effect in that Contracting Party as a grant of [design protection] under the law of said Contracting Party from the date on which the refusal was withdrawn.'' Rule

18(4) of the Hague Agreement Regulations sets forth the required contents of a notification of withdrawal of refusal. Alternatively, under Rule 18*bis*(2), the office of a Contracting Party may send the International Bureau a statement of grant of protection in lieu of a notification of withdrawal of refusal.

Article 16 of the Hague Agreement and Rule 21 of the Hague Agreement Regulations provide for the recording of certain changes in the International Register by the International Bureau, such as changes in ownership or the name or address of the holder. Under Article 16(2), any such recording at the International Bureau ''shall have the same effect as if it had been made in the Register of the Office of each of the Contracting Parties concerned, except that a Contracting Party may, in a declaration, notify the Director General that a recording [of a change in ownership] shall not have that effect in that Contracting Party until the Office of that Contracting Party has received the statements or documents specified in that declaration.''

Under Article 17 of the Hague Agreement, an ''international design registration shall be effected for an initial term of five years counted from the date of international registration'' and ''may be renewed for additional terms of five years in accordance with the prescribed procedure and subject to payment of the prescribed fees.'' The initial term of protection and additional terms may be replaced by a maximum period of protection allowed by a Contracting Party. *See* Article 7(2). The PLTIA amends 35 U.S.C. 173 to set the term of a design patent to 15 years from date of grant. 126 Stat. at 1532.

The PLTIA adds 35 U.S.C. 387 to allow the Director to establish procedures, including a requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), to excuse as to the United States ''[a]n applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application'' upon a showing of unintentional delay. 126 Stat. at 1530.

Hague Agreement Rule 8, as recently amended by the Hague Union Assembly and to enter into force as of January 1, 2014 (*see WIPO Assembly Draft Report,* H/A/32/3 Prov. (October 2, 2013), available at *http://www.wipo.int/meetings/en/details.jsp?meeting_id=29895*) provides for special requirements concerning the applicant and the creator. Under Rule 8(1)(a)(ii), ''[w]here the law of a Contracting Party bound by the 1999 Act requires the furnishing of an oath or declaration of the creator, that Contracting Party may, in a declaration, notify the Director General of that fact.'' Rule 8(1)(b) provides that the declarations referred in Rule 8(1)(a)(i) and (a)(ii) shall specify the form and mandatory contents of any required statement, document, oath or declaration. Rule 8(3) provides that ''[w]here an international application contains the designation of a Contracting Party that has made the declaration referred to in paragraph (1)(a)(ii) it shall also contain indications concerning the identity of the creator of the industrial design.'' *See* discussion of § 1.1021(d).

Relevant documents, including the implementing legislation (title I of the PLTIA), Senate Committee Reports, and the Transmittal Letter, are available on the Web site at *http://www.uspto.gov/patents/int_protect/index.jsp.* This Web site also contains a link to WIPO's Web site, which makes available relevant treaty documents, at *http://www.wipo.int/hague/en/legal_texts/.*

**Discussion of Specific Rules**

The following is a discussion of proposed amendments to Title 37 of the Code of Federal Regulations, Parts 1, 3, 5 and 11.

*Rules referencing priority or benefit under 35 U.S.C. 119, 120, 121, or 365:* The Office proposes to reference 35 U.S.C. 386(a) and (b) where the current rules contain a reference to priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b); and to reference 35 U.S.C. 386(c) where the current rules contain a reference to benefit under 35 U.S.C. 120, 121, or 365(c). Section 101(a) of the PLTIA adds 35 U.S.C. 386 to provide for a right of priority with respect to international design applications. 126 Stat. at 1529–30. The proposed references are required to account for the right of priority established under 35 U.S.C. 386.

*Section 1.4:* Section 1.4(a)(2) is proposed to be amended to include a reference to the proposed rules relating to international design applications in subpart I.

*Section 1.5:* Section 1.5(a) is proposed to be amended to provide that the international registration number may be used on correspondence directed to the Office to identify an international design application. The international registration number is the number assigned by the International Bureau upon registration of the international design in the International Register. *See* Rule 15 of the Regulations.

*Section 1.6:* Section 1.6(d)(3) is proposed to be amended to include the filing of an international design application among the correspondence for which facsimile transmission is not permitted, and if submitted, will not be accorded a receipt date. This is consistent with the treatment of the filing of national patent applications and international applications under the Patent Cooperation Treaty (''PCT'').

Section 1.6(d)(4) is proposed to be amended to prohibit the filing of color drawings by facsimile in an international design application. This is consistent with the treatment of color drawings in national applications and international applications under the PCT.

Section 1.6(d)(6) is proposed to be amended to change ''a patent application'' to ''an application'' to clearly prohibit the submission of correspondence by facsimile in an international design application that is subject to a secrecy order under §§ 5.1 through 5.5.

*Section 1.8:* Section 1.8(a)(2)(i) is proposed to be amended to add a new paragraph (K) to include the filing of an international design application among the correspondence that will not receive benefit from a Certificate of Mailing or Transmission. *See* discussion of § 1.6(d)(3), *supra.*

*Section 1.9:* Sections 1.9(a)(1) and 1.9(a)(3) are proposed to be amended to include in the definitions of ''national application'' and ''nonprovisional application,'' respectively, an international design application filed under the Hague Agreement for which the Office has received a copy of the international registration pursuant to Hague Agreement Article 10. Pursuant to 35 U.S.C. 385, added by section 101(a) of the PLTIA, an international design application that designates the United States has the effect from its filing date of an application for patent filed in the United States Patent and Trademark Office pursuant to 35 U.S.C. chapter 16. 126 Stat. at 1529. The filing date of an international design application is, subject to review, the international registration date. See discussion of § 1.1023, *infra.* Under Article 10, the International Bureau will send a copy of the international registration to each designated office after publication (Article 10(3)) or, upon notification by the Contracting Party, immediately after international registration (Article 10(5)). Consequently, the Office will receive a copy of the international registration pursuant to Article 10 only if the United States has been designated.

Sections 1.9(l) and 1.9(m) are proposed to be added to define ''Hague Agreement,'' ''Hague Agreement Article,'' ''Hague Agreement Regulations,'' and ''Hague Agreement

Rule'' as used in chapter I of Title 37 of the Code of Federal Regulations (''CFR'').

Section 1.9(n) is proposed to be added to define ''international design application'' as used in chapter I of Title 37 of the CFR. Section 1.9(n) further provides that unless otherwise clear from the wording, reference to ''design application'' or ''application for a design patent'' in chapter I of the CFR includes an international design application that designates the United States.

*Section 1.14:* Section 1.14(a)(1) is proposed to be amended to add a reference to added paragraph (j) concerning international design applications.

Section 1.14(a)(1)(ii) is proposed to be amended to replace the reference to ''abandoned application that has been published as a patent application publication'' with a reference to ''abandoned published application.'' This change is consistent with the language of § 1.11(a) to which § 1.14(a)(1)(ii) refers. In addition, the term ''published application'' is defined in § 1.9(c) as ''an application for patent which has been published under 35 U.S.C. 122(b).'' Pursuant to 35 U.S.C. 374 and 35 U.S.C. 390, international applications and international design applications that designate the United States and are published under the respective treaty, ''shall be deemed a publication under section 122(b).'' Accordingly, a published application for purposes of § 1.14 will include a publication by the International Bureau of either an international application under the PCT or an international design application under the Hague Agreement that designates the United States. Access to such published applications is permitted under PCT Article 30 and Hague Agreement Article 10. In contrast, the term ''patent application publication'' refers to a publication by the Office under § 1.215. The Office does not intend to publish international design applications (see § 1.211), as international design applications are published by the International Bureau under the Hague Agreement in English. *See* Hague Agreement Article 10(3) and Rule 6(2). *See also* 35 U.S.C. 390, added by the PLTIA, deeming a publication under the Hague Agreement as a publication under 35 U.S.C. 122(b). 126 Stat. at 1531. In addition, the Office does not publish applications for design patents under 35 U.S.C. chapter 16. *See* § 1.211(b).

Sections 1.14(a)(1)(iv)–(vi) are proposed to be amended to include a publication of an international registration under Hague Agreement Article 10(3) among the publications for which access to an unpublished application may be obtained. Section 1.14(a)(1)(iv) is proposed to be amended to permit access to the file contents of an unpublished abandoned application where the application is identified in the publication of an international registration under Hague Agreement Article 10(3), or where benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent, or has published as a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). Section 1.14(a)(1)(v) is proposed to be amended to permit access to the file contents of an unpublished pending application where benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent, or has published as a statutory invention registration, a U.S. patent application publication, an international publication under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). Section 1.14(a)(1)(vi) is proposed to be amended to permit access to a copy of the application as originally filed of an unpublished pending application if the application is incorporated by reference or otherwise identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, an international publication under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3).

Section 1.14(a)(1)(vii) is proposed to be amended consistent with amendments to § 1.14(a)(1)(iv)–(vi).

Section 1.14(j) is proposed to be added to set forth the conditions under which the records of an international design application maintained by the Office will be made available to the public.

Section 1.14(j)(1) provides that with respect to an international design application maintained by the Office in its capacity as a designated office for national processing, the records associated with the international design application may be made available as provided under § 1.14(a)–(i). Under Hague Agreement Article 10(5), the Office is to keep international design registrations confidential until publication of the international registration by the International Bureau. This provision does not alter the Office's long-standing practice to make application files available to the public to satisfy the Constitutionally mandated quid pro quo requiring public disclosure of patented inventions. *See United States ex rel. Pollok* v. *Hall,* 1889 Dec. Comm'r Pat. 582, 48 O.G. 1263 (DC 1988) (recognizing that the rights of exclusivity and confidentiality stem from Article I, Section 8, clause 8, of the Constitution in holding that the Office must make available to the public an abandoned application specifically referenced in a patent); P.J. Federico, *Commentary on the New Patent Act,* reprinted in 75 J. Pat. & Trademark Off. Soc'y 161, 196–197 (1993) (as background discussion to the addition of section 122 to the 1952 Patent Act, noting that for nearly 100 years the Office has had regulations requiring that applications be maintained confidential while recognizing public accessibility when an abandoned application is referenced in later issued patent); *see also Metropolitan West Side Elevated Railroad Company et al.* v. *Siemans,* 1898 Dec. Comm'r Pat. 220, 222 85 O.G. 290 (Comm'r Pat. 1898); *In re Reed Mfg. Co.,* 1900 Dec. Comm'r Pat. 140, 92 O.G. 2001 (Comm'r Pat. 1900); *Ex parte Lewis and Unger,* 1903 Dec. Comm'r Pat. 303, 106 O.G. 543 (Comm'r Pat. 1903); *In re Doman,* 1905 Dec. Comm'r Pat. 101, 115 O.G. 804 (Comm'r Pat. 1905). As a designated office, the Office will establish a file for national processing upon receipt of the published international registration from the International Bureau. In such cases, the records of the application file will be available pursuant to § 1.14(a)(ii)–(iii). The provisions of § 1.14(j)(1) provide for access to such international design applications maintained by the Office for national processing, thus treating international design applications the same as regular national applications.

Section 1.14(j)(2) provides that with respect to an international design application maintained by the Office in its capacity as an office of indirect filing (§ 1.1002), the records of the international design application may be available under § 1.14(j)(1) when they are contained in the file of the international design application maintained by the Office for national processing. Also, if benefit of the international design application is claimed under 35 U.S.C. 386(c) in a U.S. patent or published application, the file contents may be made available to the public, or a copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application may be provided to any person upon written

request, and payment of the appropriate fee (§ 1.19(b)). The Office plans to use the application file maintained by the Office as an office of indirect filing as the file for national processing as a designated office. Consequently, the records maintained by the Office as an office of indirect filing may be available where the records are part of the file maintained by the Office as a designated office and are available pursuant to § 1.14(j)(1). The records maintained by the Office as an office of the indirect filing may also be available where benefit to the international design application is claimed under 35 U.S.C. 386(c) in a U.S. patent or published application. Under the provisions of 35 U.S.C. 386(c) and 35 U.S.C. 388, applicants may claim benefit to an international design application that designates the United States provided the application claiming benefit of the international design application is filed before the date of withdrawal, renunciation, cancellation, or abandonment of the international application, either generally or as to the United States.

*Section 1.16:* Sections 1.16(b), (l) and (p) are proposed to be amended to clarify that the design application fees specified therein are applicable to design applications filed under 35 U.S.C. 111. The other provisions of section 1.16 are not proposed to change.

*Section 1.17:* Section 1.17(f) is proposed to be amended to specify the fee for filing a petition under § 1.1023 to review the filing date of an international design application in the United States. Section 101(a) of the PLTIA adds 35 U.S.C. 384, which provides that the filing date of an international application in the United States is the effective registration date (35 U.S.C. 384(a)), and authorizes the Director to establish procedures, including the payment of a surcharge, to review the filing date, which may result in a determination that the application has a filing date in the United States other than the effective registration date (35 U.S.C. 384(b)). 126 Stat. at 1529. The review procedure authorized under 35 U.S.C. 384(b) is set forth in proposed § 1.1023, discussed *infra,* which requires, *inter alia,* the fee set forth in § 1.17(f). Under 35 U.S.C. 389(b), added by the PLTIA, all questions of procedures regarding an international design application designating the United States, unless required by the Hague Agreement and regulations thereunder, shall be determined as in the case of applications filed under 35 U.S.C. chapter 16. 126 Stat. at 1530. Accordingly, pursuant to the authority under 35 U.S.C. 389(b), the fee for filing a petition to review the filing date of an international design application under § 1.1023 is the same as the fee for filing a petition to accord a filing date in a national application (*see* §§ 1.53(e) and 1.57(a)).

Section 1.17(u) is proposed to be added to set forth the fee for filing a petition to excuse an applicant's failure to act within prescribed time limits in an international design application. Section 101(a) of the PLTIA adds 35 U.S.C. 387 to provide that an applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application may be excused as to the United States upon a showing satisfactory to the Director of unintentional delay and under such conditions, including a requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), as may be prescribed by the Director. 126 Stat. at 1530. The conditions for excusing an applicant's failure to act within the prescribed time limits in an international design application are set forth in proposed § 1.1051, discussed *infra.* These requirements include, *inter alia,* the requirement to pay the fee set forth in § 1.17(u). The fee set forth in § 1.17(u) does not include a micro entity amount as this fee is set under 35 U.S.C. 41(a)(7) as amended by section 202(b)(1)(A) of the PLTIA, and not section 10(a) of the AIA. Section 10(b) of the AIA provides that the micro entity discount applies to fees set under section 10(a) of the AIA. *See* Pub. L. 112–29, 125 Stat. 284, 316–17 (2011). The Office will consider including a micro entity amount in § 1.17(u) in the event that patent fees are again set or adjusted under section 10(a) of the AIA.

Section 1.17(v) is proposed to be added to specify the fee for filing a petition under § 1.1052 to convert an international design application to a design application under 35 U.S.C. chapter 16. *See* discussion of § 1.1052, *infra.* The petition fee is not being set pursuant to section 10(a) of the AIA. Rather, the Office is setting this fee in this rulemaking pursuant to its authority under 35 U.S.C. 41(d)(2), which provides that fees for all processing, services, or materials relating to patents not specified in 35 U.S.C. 41 are to be set at amounts to recover the estimated average cost to the Office of such processing, services, or materials.

The Office uses an Activity Based Information (''ABI'') methodology to determine the estimated average costs (or expense) on a per process, service, or material basis including the particular processes and services addressed in this rulemaking. The ABI analysis includes compiling the Office costs for a specified activity, including the direct-expense (*e.g.,* direct personnel compensation, contract services, maintenance and repairs, communications, utilities, equipment, supplies, materials, training, rent and program-related information technology (''IT'') automation), an appropriate allocation of allocated direct expense (*e.g.,* rent, program-related automation, and personnel compensation benefits such as medical insurance and retirement), and an appropriate allocation of allocated indirect expense (*e.g.,* general financial and human resource management, nonprogram specific IT automation, and general Office expenses). The direct expense for an activity plus its allocated direct expense and allocated indirect expense is the ''fully burdened'' expense for that activity. The ''fully burdened'' expense for an activity is then divided by production measures (number of that activity completed) to arrive at the fully burdened per-unit cost for that activity. The cost for a particular process is then determined by ascertaining which activities occur for the process, and how often each such activity occurs for the process. The ABI analysis in this rulemaking is based upon fiscal year 2012 expense. The prospective fees are calculated using the ABI expense and applying adjustment factors to estimate the cost in fiscal year 2015 expense, as fiscal year 2015 may be the next opportunity to consider whether to revisit the fees under section 10(a) of the AIA. This analysis uses 2012 expense as a proxy and adjusts for yearly inflation in the out-years.

The Office is estimating the fiscal year 2015 cost in this rulemaking by using the projected change in the Consumer Price Index for All Urban Consumers (''CPI–U'') for fiscal years 2013, 2014, and 2015, as the CPI–U is a reasonable basis for determining the change in Office costs between fiscal year 2012 and fiscal year 2015. The individual CPI–U during each fiscal year is multiplied together to obtain a cumulative CPI–U from fiscal year 2013 through fiscal year 2015. The CPI–U increase for fiscal year 2013 is forecasted to be 2.1 percent. The CPI–U increase for fiscal year 2014 is forecasted to be 2.2 percent. The CPI–U increase for fiscal year 2015 is forecasted to be 2.2 percent. *See http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/spec.pdf.* Thus, the estimated fiscal year 2015 cost amounts are calculated by multiplying the actual expense amount for fiscal year 2012 by 1.066 (1.021

multiplied by 1.022 multiplied by 1.022 equals 1.066). The estimated fiscal year 2015 cost amounts are then rounded to the nearest ten dollars by applying standard arithmetic rules so that the resulting fee amounts will be convenient for international design application users.

The processing of a petition to convert an international design application to a design application under 35 U.S.C. chapter 16 involves review and preparation of a decision for the petition. An estimate for the number of hours required for a GS–12, Step 5 attorney to review the petition and draft a decision is two hours. The ABI analysis indicates that the estimated fully burdened expense during fiscal year 2012 to review and prepare a decision for the petition is $172 ($86 fully burdened labor cost per hour multiplied by 2). Thus, the Office estimates the fiscal year unit cost to review the petition and draft a decision, using the estimated CPI–U increase for fiscal years 2013, 2014, and 2015, is $183 ($172 multiplied by 1.066), which, when rounded to the nearest ten dollars, is a proposed fee for conversion of $180. Additional information concerning the Office's analysis of the estimated fiscal year 2015 costs for converting an international design application to a design application under 35 U.S.C. chapter 16 is available upon request.

*Section 1.18:* Section 1.18(b)(3) is proposed to be added to provide that an issue fee paid through the International Bureau in an international design application designating the United States shall be in the amount specified on the Web site of the WIPO, available at: *http://www.wipo.int/hague.* The option for applicants to pay the issue fee through the International Bureau is provided for in Hague Agreement Rule 12(3)(c) and is in lieu of paying the issue fee under § 1.18(b)(1). Article 7(2) permits a Contracting Party to declare that the prescribed designation fee shall be replaced by an individual designation fee, whose amounts can be changed in further declarations. The International Bureau accepts payment only in Swiss currency (see Hague Agreement Rule 28(1)) and all fee amounts specified on the WIPO Web site are in Swiss currency.

*Section 1.25:* Section 1.25(b) is proposed to be amended to provide that international design application fees (§ 1.1031) may be charged to a deposit account.

*Section 1.27:* Section 1.27(c)(3) is proposed to be amended to provide that the payment, by any party, of the exact amount of the small entity first part of the individual designation fee for the United States (Hague Agreement Rule 12(1)(a)(iii)) to the International Bureau in an international design application will be treated as a written assertion of entitlement to small entity status. The proposed change to § 1.27(c)(3) will permit applicants paying fees to the International Bureau in an international design application designating the United States to establish small entity status for the purposes of the United States.

*Section 1.29:* Section 1.29(e) is proposed to be amended to provide that a micro entity certification filed in an international design application may be signed by a person authorized to represent the applicant under § 1.1041(a) before the International Bureau where the micro entity certification is filed with the International Bureau.

*Section 1.41:* Section 1.41(f) is proposed to be added to set forth the inventorship in an international design application designating the United States. Specifically, the inventorship of an international design application designating the United States is the creator or creators set forth in the publication of the international registration under Hague Agreement Article 10(3). Any correction of inventorship must be pursuant to § 1.48.

*Section 1.46:* Section 1.46(b) is proposed to be amended to provide that if an application entering the national stage under 35 U.S.C. 371, or an international design application before the United States as a designated office, is applied for by a person other than the inventor under § 1.46(a) (i.e., the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter, as provided under 35 U.S.C. 118) that person must have been identified as the applicant for the United States in the international stage of the international application or as the holder in the publication of the international registration under Hague Agreement Article 10(3). The proposed amendment does not change the current practice with respect to national stage applications under 35 U.S.C. 371, where a person seeking to become an applicant under § 1.46 in the national phase was not named as an applicant for the United States in the international phase. In such case, that person must comply with the requirements under § 1.46(c), including the requirements of §§ 3.71 and 3.73, to be an applicant in the national phase. The proposed amendment treats international design applications in the same manner as international applications under the PCT. *See* discussion of § 1.1011(b), *infra,* regarding who may be an applicant for an international design application designating the United States.

Section 1.46(c) is proposed to be amended to provide that any request to correct or update the name of the applicant under this section must include an application data sheet under § 1.76 specifying the correct or updated name of the applicant in the applicant information section (§ 1.76(b)(7)), except that correction of the name of the applicant may be made pursuant to Hague Agreement Article 16 for an international design application. Section 1.46(c) is also proposed to be amended to provide that any request to replace the original applicant with an applicant under § 1.46 must include an application data sheet under § 1.76 specifying the applicant in the applicant information section (§ 1.76(b)(7)) and comply with §§ 3.71 and 3.73.

Article 16(1)(ii) provides for recording in the International Register by the International Bureau of a change in the name and address of the holder. Under Article 16(2), such recording has the same effect as if made in the Office of each of the designated Contracting Parties. Accordingly, § 1.46(c) is proposed to be amended to recognize a change in the *name* of the holder (*i.e.,* applicant) in an international design application designating the United States, where the name change was recorded by the International Bureau pursuant to Article 16. Article 16 also provides for the recording of a change in ownership of the international registration, the effect of which may be made subject to the Office of the Contracting Party receiving the statement or documents it specifies in a declaration. In such case, the new owner may become an applicant in the international design application before the Office for national processing in accordance with the procedure set forth in § 1.46(c).

*Section 1.53:* Section 1.53(d)(1)(ii) is proposed to be amended to provide that a continued prosecution application (''CPA'') of a prior nonprovisional application may be filed where the prior nonprovisional application is a design application, but not an international design application, that is complete as defined by § 1.51(b). Under current § 1.53(d), a CPA may be filed where the prior nonprovisional application is a design application that is complete as defined by § 1.51(b). The filing of a CPA of a prior nonprovisional international design application would not be appropriate, as a CPA is a design application under 35 U.S.C. chapter 16

and thus subject to different statutory and regulatory requirements relative to a nonprovisional international design application.

*Section 1.55:* Section 1.55(b) is proposed to be amended to provide that the six-month period specified in that paragraph is subject to Hague Agreement Rule 4(4). Rule 4(4) provides that if a period expires on a day on which the International Bureau or the Office concerned is not open to the public, the period shall expire on the first subsequent day on which the International Bureau or the Office concerned is open to the public. Section 101(a) of the PLTIA adds 35 U.S.C. 386(b) which provides: ''[i]n accordance with the conditions and requirements of subsections (a) through (d) of section 119 and section 172 and the treaty and the Regulations, an international design application designating the United States shall be entitled to the right of priority based on a prior foreign application . . . .'' 126 Stat. at 1529. Thus, pursuant to 35 U.S.C. 386(b), the priority period in an international design application designating the United States is subject to extension under Rule 4(4).

Section 1.55(m) is proposed to be added to set forth the time for filing a priority claim and certified copy of a foreign application in an international design application designating the United States. Section 1.55(m) provides that in an international design application designating the United States, the claim for priority may be made in accordance with the Hague Agreement and the Hague Agreement Regulations. Section 1.55(m) further provides that for purposes of the United States, the priority claim may also be presented in an application data sheet (§ 1.76(b)(6)), filed directly with the Office after publication of the international design application under Article 10(3) of the Hague Agreement, identifying the foreign application for which priority is claimed by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The priority claim and certified copy must be furnished in accordance with the time period and other conditions set forth in paragraph (g).

*Section 1.57:* Section 1.57(a) is proposed to be amended by revising paragraph (a) to include a new paragraph (a)(3) and to renumber paragraph (3) as paragraph (4). Section 101(a) of the PLTIA adds 35 U.S.C. 386 to provide for a right of priority to an international design application. 126 Stat. at 1529–30. Accordingly, § 1.57(a) is proposed to be amended to provide for incorporation by reference to an inadvertently omitted portion of the specification or drawings based on a benefit claim under 1.78 to an international design application present upon filing, and to provide that any amendment to an international design application that designates the United States pursuant to § 1.57(a) shall be effective only as to the United States, and shall have no effect on the filing date of the application.

*Section 1.76:* Section 1.76(b)(6) is proposed to be amended to provide that the foreign priority information section of the application data sheet may include the intellectual property authority rather than country of filing. This change is for consistency with the requirements of 35 U.S.C. 119(b) and § 1.55.

*Section 1.78:* Section 101(a) of the PLTIA adds 35 U.S.C. 386(c) to provide for benefit claims with respect to international design applications designating the United States in accordance with the conditions and requirements of 35 U.S.C. 120. 126 Stat. at 1529–30. Accordingly, § 1.78(c) is proposed to be amended to provide for benefit claims under 35 U.S.C. 386(c). Section 1.78(c)(1)(iii) is added to provide that the prior-filed application to which benefit is claimed may be an international design application designating the United States that is entitled to a filing date as set forth in § 1.1023.

Section 1.78(c)(2) is proposed to be amended to provide that the reference required under § 1.78(c)(2) may identify an international design application by international registration number and international registration date.

Section 1.78(c)(7) is proposed to be added to provide that where benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) to an international application or an international design application, which designates but did not originate in the United States, the Office may require a certified copy of such application together with an English translation thereof if filed in another language. The authority to require a certified copy of an international design application that designates the United States but did not originate in the United States, and an English translation thereof, is provided in 35 U.S.C. 386(c). Similar authority with respect to international applications that designate the United States but do not originate in the United States is provided in 35 U.S.C. 365(c). Since international applications are published under PCT Article 21(2), and international design applications are published under Hague Agreement Article 10(3), the Office would not ordinarily require a certified copy of the international application or international design application pursuant to § 1.78(c)(7). Rather, the Office foresees the authority under § 1.78(c)(7) to be used primarily in instances where the international application or international design application did not publish under the respective treaty, or where there is a question as to the content of the disclosure of the application as of its filing date, and the certified copy and any English translation are needed to determine entitlement to the benefit of the filing date of the international application or international design application in order to, for example, overcome a prior art reference.

Section 1.78(d) is proposed to be amended to provide for acceptance of a delayed benefit claim to an international application designating the United States pursuant to the petition procedure set forth therein.

*Section 1.84:* Section 1.84(y) is proposed to be amended to include a cross reference to international design application reproductions in proposed § 1.1026.

*Section 1.85:* Section 1.85(a) is proposed to be amended to provide that if a drawing in an international design application designating the United States meets the requirements of § 1.1026, the drawing may be admitted for examination. Section 1.85(c) is proposed to be amended to provide that if a drawing in an international design application does not comply with § 1.1026 at the time an application is allowed, the Office may notify the applicant in a notice of allowability and set a three-month period of time from the mail date of the notice of allowability within which the applicant must file a corrected drawing to avoid abandonment.

*Section 1.97:* Section 1.97(b)(3) is proposed to be added to provide that an information disclosure statement may be filed within three months of the date of publication of the international registration under Hague Agreement Article 10(3) in an international design application. An information disclosure statement may also be submitted with the international design application. *See* Hague Agreement Rule 7(5)(g) (''The international application may be accompanied by a statement that identifies information known by the applicant to be material to the eligibility for protection of the industrial design concerned.'').

*Section 1.105:* Section 1.105(a)(1) is proposed to be amended to make a requirement for information under

§ 1.105 applicable to international design applications and supplemental examination proceedings.

*Section 1.114:* Section 1.114(e) is proposed to be amended to provide that a request for continued examination may not be filed in an international design application. This is consistent with the treatment of applications for design patents under 35 U.S.C. chapter 16.

*Section 1.155:* Section 1.155 is proposed to be amended to provide for expedited examination of an international design application that designates the United States. To qualify for expedited examination, § 1.155(a)(1) provides that the international design application must be published pursuant to Hague Agreement Article 10(3).

*Section 1.211:* Section 1.211(b) is proposed to be amended to provide that an international design application under 35 U.S.C. chapter 38 shall not be published by the Office under § 1.211. International registrations are published by the International Bureau pursuant to Article 10(3) of the Hague Agreement. The international registration includes the data contained in the international design application and any reproduction of the industrial design. *See* Rule 15(2) of the Regulations.

*Section 1.312:* Section 1.312 is proposed to be amended to provide that where the issue fee is paid in an international design application through the International Bureau, the date of payment of the issue fee for purposes of determining the timeliness of an amendment under § 1.312 will be the date the issue fee is recorded by the Office. This date will be indicated as the accounting date in the Office's Revenue Accounting and Management System. Under the Hague Agreement, the issue fee may be paid through the International Bureau. An amendment under § 1.312 filed after payment of the issue fee to the International Bureau but before the fee is recorded by the Office would be untimely under the current rule. Because of the inherent time lag between payment of the issue fee to the International Bureau and crediting of the issue fee to the account of the Office, the Office may not have sufficient information at the time of receipt of the amendment under § 1.312 to determine whether such amendment may be entered under the current rule. The proposed amendment to § 1.312 is more favorable to applicants and would facilitate processing of such amendments by the Office. In addition, since the application will not be scheduled for printing as a patent until the issue fee is recorded by the Office, the proposed amendment would not delay issuance of the patent.

A new subpart I is proposed to be added to provide for international and national processing of international design applications.

*Section 1.1001:* Section 1.1001 is proposed to be added to include definitions of terms used in subpart I.

*Section 1.1002:* Section 1.1002 is proposed to be added to indicate the major functions of the USPTO as an office of indirect filing. These include: (1) Receiving and according a receipt date to international design applications; (2) collecting and, when required, transmitting fees for processing international design applications; (3) determining compliance with applicable requirements of part 5 of chapter I of Title 37 of the CFR; and (4) transmitting an international design application to the International Bureau, unless prescriptions concerning national security prevent the application from being transmitted.

*Section 1.1003:* Section 1.1003 is proposed to be added to indicate the major functions of the USPTO as a designated office. These include: (1) Accepting for national examination international design applications which satisfy the requirements of the Hague Agreement, Regulations and the regulations; (2) performing an examination of the international design application in accordance with 35 U.S.C. chapter 16; and (3) communicating the results of examination to the International Bureau.

*Section 1.1004:* Section 1.1004 is proposed to be added to indicate the major functions of the International Bureau. These include: (1) Receiving international design applications directly from applicants and indirectly from an office of indirect filing; (2) collecting required fees and crediting designation fees to the accounts of the Contracting Parties concerned; (3) reviewing international design applications for compliance with prescribed formal requirements; (4) translating international design applications into the required languages for recordation and publication; (5) recording international design applications in the International Register; and (6) publishing international design applications in the International Designs Bulletin.

*Section 1.1011:* Section 1.1011(a) is proposed to be added to specify who may file an international design application through the USPTO. Under Article 3, any person that is a national of a State that is a Contracting Party or a State member of an intergovernmental organization that is a Contracting Party, or that has a domicile, a habitual residence or a real and effective industrial or commercial establishment in the territory of a Contracting Party, shall be entitled to file an international application. Under Article 4(1), the international application may be filed, at the option of the applicant, either directly with the International Bureau or through the Office of the applicant's Contracting Party (*i.e.,* an office of indirect filing). In accordance with Articles 3 and 4(1), § 1.1011(a) specifies that only persons who are nationals of the United States or who have a domicile, a habitual residence or a real and effective industrial or commercial establishment in the territory of the United States may file international design applications through the United States Patent and Trademark Office.

Section 1.1011(b) is proposed to be added to provide that although the USPTO will accept international design applications filed by any person referred to in § 1.1011(a), an international design application designating the United States may be refused by the Office as a designated office if the applicant is not a person qualified under 35 U.S.C. chapter 11 to be an applicant. The PLTIA does not distinguish a person qualified to be an applicant for an international design application designating the United States from a person qualified to be an applicant in a national design application under 35 U.S.C. 171–173. *See* section 101(a) of the PLTIA, which adds: 35 U.S.C. 389(b) (''All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.''); 35 U.S.C. 382(c) (''Except as otherwise provided in this chapter, the provisions of chapter 16 shall apply.''); and 35 U.S.C. 383 (''In addition to any requirements pursuant to chapter 16, the international design application shall contain . . .''). 126 Stat. at 1528–30.

*Section 1.1021:* Section 1.1021 is proposed to be added to specify the contents of the international design application.

Section 1.1021(a) specifies the mandatory contents of an international design application. The international design application must be in English, French or Spanish. In addition, the application shall contain or be accompanied by: (1) A request for international registration under the Hague Agreement (Article 5(1)(i)); (2) the prescribed data concerning the

applicant (Article 5(1)(ii) and Rule 7(3)(i) and (ii)); (3) the prescribed number of copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international design application, presented in the prescribed manner, however, where the industrial design is two-dimensional and a request for deferment of publication is made in accordance with Article 5(5), the international design application may, instead of containing reproductions, be accompanied by the prescribed number of specimens of the industrial design (Article 5(1)(iii)); (4) an indication of the product or products that constitute the industrial design or in relation to which the industrial design is to be used, as prescribed (Article 5(1)(iv) and Rule 7(3)(iv)); (5) an indication of the designated Contracting Parties (Article 5(1)(v)); (6) the prescribed fees (Article 5(1)(vi) and Rule 12(1)); (7) the Contracting Party or Parties in respect of which the applicant fulfills the conditions to be the holder of an international registration (Rule 7(3)(iii)); (8) the number of industrial designs included in the international application, which may not exceed 100, and the number of reproductions or specimens of the industrial designs accompanying the international application (Rule 7(3)(v)); (9) the amount of the fees being paid and the method of payment, or instructions to debit the required amount of fees to an account opened with the International Bureau, and the identification of the party effecting the payment or giving the instructions (Rule 7(3)(vii)); and (10) an indication of applicant's Contracting Party as required under Rule 7(4)(a).

Section 1.1021(b) sets forth additional mandatory contents that may be required by certain Contracting Parties. These include: (1) Elements referred to in Article 5(2)(b) required for a filing date in the designated Contracting Party for which a declaration was made by that Contracting Party; and (2) a statement, document, oath or declaration required pursuant to Rule 8(1) by a designated Contracting Party. The elements that may be required under Article 5(2)(b) are: (i) Indications concerning the identity of the creator; (ii) a brief description of the reproduction or of the characteristic features of the industrial design; and (iii) a claim.

Section 1.1021(c) identifies optional contents that the international design application may contain. These include: (1) Two or more industrial designs, subject to the prescribed conditions (Article 5(4) and Rule 7(7)); (2) a request for deferment of publication (Article 5(5) and Rule 7(5)(e)); (3) an element referred to in item (i) or (ii) of Article 5(2)(b) of the Hague Agreement or in Article 8(4)(a) of the 1960 Act even where that element is not required in consequence of a notification in accordance with Article 5(2)(a) of the Hague Agreement or in consequence of a requirement under Article 8(4)(a) of the 1960 Act (Rule 7(5)(a)); (4) the name and address of applicant's representative, as prescribed (Rule 7(5)(b)); (5) a claim of priority under Article 4 of the Paris Convention, as prescribed (Rule 7(5)(c)); (6) a declaration, for purposes of Article 11 of the Paris Convention, that the product or products which constitute the industrial design, or in which the industrial design is incorporated, have been shown at an official or officially recognized international exhibition, together with the place where the exhibition was held and the date on which the product or products were first exhibited there and, where less than all the industrial designs contained in the international application are concerned, the indication of those industrial designs to which the declaration relates or does not relate (Rule 7(5)(d)); (7) any declaration, statement or other relevant indication as may be specified in the Administrative Instructions (Rule 7(5)(f)); (8) a statement that identifies information known by the applicant to be material to the eligibility for protection of the industrial design concerned (Rule 7(5)(g)); and (9) a proposed translation of any text matter contained in the international application for purposes of recording and publication (Rule 6(4)).

Section 1.1021(d) is proposed to be added to set forth the required contents for an international design application that designates the United States. Section 1.1021(d) provides that, in addition to the mandatory requirements set forth in § 1.1021(a), an international design application that designates the United States shall contain or be accompanied by: (1) A claim (§§ 1.1021(b)(1)(iii) and 1.1025); (2) indications concerning the identity of the creator (Rule 11(1)); and (3) the inventor's oath or declaration (§§ 1.63 and 1.64). Section 1.1021(d)(3) further provides that the requirements in § 1.63(b) and § 1.64(b)(4) to identify each inventor by his or her legal name, mailing address, and residence, if an inventor lives at a location which is different from the mailing address, and the requirement in § 1.64(b)(2) to identify the residence and mailing address of the person signing the substitute statement, will be considered satisfied by the presentation of such information in the international design application prior to international registration.

Under Article 5(2), a Contracting Party may require an international design application to contain certain additional elements, where the law of that Contracting Party, at the time it becomes a party to the Hague Agreement, requires the application to contain such elements to be accorded a filing date. The elements set forth in Article 5(2) are: (1) Indications concerning the identity of the creator of the industrial design; (2) a brief description of the reproduction or of the characteristic features of the industrial design; and (3) a claim. Article 5(2) permits a Contracting Party to notify the Director General of the elements required in order for the application to be accorded a filing date.

A claim is a filing date requirement for design applications in the United States. While the PLTIA, in implementing the Patent Law Treaty, eliminates the requirement for a claim as a filing date requirement in utility applications, it does not eliminate the requirement for a claim as a filing date requirement for design applications. See section 202 of the PLTIA amending 35 U.S.C. 171 to provide that ''[t]he filing date of an application for patent for design shall be the date on which the specification as prescribed by [35 U.S.C.] 112 and any required drawings are filed.'' 126 Stat. 1535. The specific wording of the claim shall be as prescribed in § 1.1025. *Id.* Consequently, an international design application that designates the United States but does not contain a claim will not be registered by the International Bureau in the international register and thus will not be entitled to a filing date in the United States. *See* 35 U.S.C. 384 and Article 10(2). In such case, the International Bureau will invite the applicant to submit the claim within a prescribed time limit, and will accord a date of international registration as of the date of receipt of the claim (assuming there are no other filing date defects). *See* Article 10(2)(b). Failure to timely submit the claim in response to the invitation by the International Bureau will result in the application being deemed not to contain the designation of the United States. *See* Article 8(2)(b).

Section 1.1021(d) also requires an international design application designating the United States to contain indications concerning the identity of the creator of the industrial design and the inventor's oath or declaration

(§§ 1.63 or 1.64). The identity of the creator and the inventor's oath or declaration are requirements applicable to design applications under 35 U.S.C. chapter 16. *See, e.g.,* 35 U.S.C. 115 and 35 U.S.C. 101. The PLTIA provides for parity in the treatment of international design applications designating the United States with design applications under 35 U.S.C. chapter 16, except where otherwise provided by the PLTIA, Hague Agreement, or Regulations. *See, e.g.,* 35 U.S.C. 389(b) (''All questions of substance and, unless otherwise required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16.''); 35 U.S.C. 382(c) (''Except as otherwise provided in this chapter, the provisions of chapter 16 shall apply.''); and 35 U.S.C. 383 (''In addition to any requirements pursuant to chapter 16, the international design application shall contain . . .''). 126 Stat. at 1528–30. *See also* discussion of Hague Agreement Rule 8, *supra.*

*Section 1.1022:* Section 1.1022 is proposed to be added to specify form and signature requirements for international design applications. Section 1.1022(a) provides that the international design application shall be presented on the official form or any form having the same contents and format. *See* Rules 7(1) and 1(vi). Section 1.1022(b) provides that the international design application shall be signed by the applicant. *Id.*

*Section 1.1023:* The filing date of an international design application in the United States is set forth in 35 U.S.C. 384, added by section 101 of the PLTIA, which provides ''[s]ubject to subsection (b), the filing date of an international design application in the United States shall be the effective registration date.'' 126 Stat. at 1529. The term ''effective registration date'' is defined in 35 U.S.C. 381(a)(5) as ''the date of international registration determined by the International Bureau under the treaty.'' 126 Stat. at 1528. Accordingly, § 1.1023(a) is proposed to be added to set forth that the filing date of an international design application in the United States is the date of international registration determined by the International Bureau, subject to review under subsection (b).

Section 1.1023(b) is proposed to be added to set forth a procedure to review the filing date of an international design application. Pursuant to 35 U.S.C. 384(b), ''[t]he Director may establish procedures, including the payment of a surcharge, to review the filing date under this section. Such review may result in a determination that the application has a filing date in the United States other than the effective registration date.'' 126 Stat. at 1529. Accordingly, § 1.1023(b) provides that where the applicant believes the international design application is entitled under the Hague Agreement to a filing date in the United States other than the date of international registration, the applicant may petition the Director to accord the international design application a filing date in the United States other than the date of international registration. Section 1.1023(b) requires that the petition be accompanied by the fee set forth in § 1.17(f) and include a showing to the satisfaction of the Director that the international design application is entitled to such filing date.

*Section 1.1024:* Section 1.1024 is proposed to be added to set forth the requirements of a description, where contained in the international design application. WIPO form ''Application for International Registration'' (DM/1) includes a section (Box 9) entitled ''Description.'' Rule 11(2) provides: ''[w]here the international application contains a description, the latter shall concern those features that appear in the reproductions of the industrial design and may not concern technical features of the operation of the industrial design or its possible utilization. If the description exceeds 100 words, an additional fee, as set out in the Schedule of Fees, shall be payable.'' Pursuant to Article 5(2), a Contracting Party may require ''a brief description of the reproduction or of the characteristic features of the industrial design that is the subject of that application'' where such is a filing date requirement under its national law. *See* Article 5(2)(b)(ii). Rule 7(5)(a) allows the applicant to include in the international design application the description referred to in Article 5(2)(b)(ii) even if not required by a Contracting Party pursuant to Article 5(2).

At the time the United States becomes party to the Hague Agreement, the requirements for a filing date for an application for design patent will be governed by 35 U.S.C. 171, as amended under Section 202 of the PLTIA, which states in subsection (c): ''[t]he filing date of an application for patent for design shall be the date on which the specification as prescribed by [35 U.S.C.] 112 and any required drawings are filed.'' 126 Stat. 1535. A ''brief description of the reproduction or of the characteristic features of the international design'' is not a *per se* filing date requirement in the United States. Rather, 35 U.S.C. 112(a) requires, *inter alia,* that the ''specification shall contain a written description of the invention.'' This requirement may be satisfied by the reproductions. *See In re Daniels,* 144 F.3d 1452, 1456, 46 USPQ2d 1788, 1790 (Fed. Cir. 1998) (''It is the drawings of the design patent that provide the description of the invention.''); *In re Klein,* 987 F.2d 1569, 1571, 26 USPQ2d 1133, 1134 (Fed. Cir. 1993) (''[U]sual[ly] in design applications, there is no description other than the drawings''); *Hupp* v. *Siroflex of America, Inc.,* 122 F.3d 1456, 1464, 43 USPQ2d 1887, 1893 (Fed. Cir. 1997) (''A design patent contains no written description; the drawings are the claims to the patented subject matter.''); *Ex parte Tayama,* 24 USPQ2d 1614, 1617 (Bd. Pat. App. & Int'f 1992) (''[D]esign applications must meet the requirements of 35 U.S.C. 112, first paragraph. While this *ordinarily* requires little if any detailed description, some design applications may require a disclosure as detailed as that in a complex utility application. There is no 'per se' rule with respect to the extent of the disclosure necessary in a design application. The adequacy of the disclosure must be determined on a case-by-case basis.''). Nevertheless, applicants should consider whether including additional written description of the invention (in Box 9 of the DM/1 form or otherwise) is needed to comply with 35 U.S.C. 112. Furthermore, the Office encourages the inclusion of a brief description of the views of the reproduction, as required for design applications filed under 35 U.S.C. chapter 16. *See, e.g.,* § 1.153(b) (''No description, other than a reference to the drawing, is ordinarily required . . . .); § 1.154(b) (''The specification should include . . . 4) Description of the figure or figures of the drawing''); and MPEP 1503.01, II (''Descriptions of the figures are not required to be written in any particular format, however, if they do not describe the views of the drawing clearly and accurately, the examiner should object to the unclear and/or inaccurate descriptions and suggest language which is more clearly descriptive of the views.''). Such figure descriptions are helpful for examination and may, in some cases, avoid potential issues under 35 U.S.C. 112.

Thus, § 1.1024(a) is proposed to be added to provide that an international design application designating the United States must include a specification as prescribed by 35 U.S.C. 112, and preferably include a brief description of the view or views of the reproduction.

Section 1.1024(b) provides that the description requirements set forth in Rule 11(2) may apply to designations of Contracting Parties other than the United States that require a description. Applicants are cautioned that a characteristic features statement may serve to later limit the claim in the United States. *See McGrady* v. *Aspenglas Corp.,* 487 F. Supp. 859, 208 U.S.P.Q. 242 (S.D.N.Y. 1980); MPEP 1503.01.

*Section 1.1025:* Section 1.1025 is proposed to be added to set forth that the specific wording of the claim in an international design application designating the United States shall be in formal terms to the ornamental design for the article (specifying name of article) as shown, or as shown and described. Section 1.1025 also provides that more than one claim is neither required nor permitted for purposes of the United States. Under Rule 11(3), a declaration requiring a claim pursuant to Article 5(2) ''shall specify the exact wording of the required claim.''

*Section 1.1026:* Section 1.1026 is proposed to be added to provide that reproductions shall comply with the requirements of Rule 9 and Part Four of the Administrative Instructions. Rule 9 sets forth the requirements for reproductions in international design applications, including the form and number of reproductions, and references the requirements of the Administration Instructions. Part Four of the Administrative Instructions sets forth requirements concerning the presentation of the reproductions (Section 401), representation of the industrial design (Section 402), disclaimer (Section 403), requirements for photographs and other graphic representations (Section 404), numbering of reproductions (Section 405), requirements for specimens (Section 406), and relation with a principal industrial design or a principal application or registration (Section 407).

*Section 1.1027:* Section 1.1027 provides that where a request for deferment of publication has been filed in respect of a two-dimensional industrial design, the international design application may include specimens of the design in accordance with Rule 10 and Part Four of the Administrative Instructions. Section 1.1027 further provides that neither a request for deferment of publication nor specimens are permitted in an international design application that designates the United States or any other Contracting Party that does not permit deferment of publication. Under the Hague Agreement, specimens are only permitted where a request for deferment of publication has been made. *See* Article 5(1)(iii) and Rule 10(1). However, a request for deferment of publication is not permitted in an international design application that designates a Contracting Party that has made a declaration under Article 11(1)(b) that its applicable law does not provide for deferment of publication. *See* Article 11(3).

*Section 1.1031:* Section 1.1031 is proposed to be added to provide for payment of the international design application fees.

Section 1.1031(a) provides that international design applications filed through the Office as an office of indirect filing are subject to payment of a transmittal fee in the amount of $130. Under the Hague Agreement, an office of indirect filing may require payment of a transmittal fee. *See* Article 4(2). Section 101(a) of the PLTIA adds 35 U.S.C. 382(b), which provides that the international design application and international fees shall be forwarded by the Office to the International Bureau ''upon payment of a transmittal fee.'' 126 Stat. at 1528. Accordingly, § 1.1031(a) provides for the payment of a transmittal fee. The transmittal fee is not being set pursuant to section 10(a) of the AIA. Rather, the Office is setting this fee pursuant to its authority under 35 U.S.C. 41(d)(2) in this rulemaking, which provides that fees for all processing, services, or materials relating to patents not specified in 35 U.S.C. 41 are to be set at amounts to recover the estimated average cost to the Office of such processing, services, or materials. *See* 35 U.S.C. 41(d)(2).

The transmittal fee for an international design application filed under the Hague Agreement through the USPTO as an office of indirect filing involves the following activities, which the Office considered in estimating the fiscal year 2012 costs: (1) Processing incoming paper ($2); (2) processing application fees ($7); (3) application indexing/scanning ($65); (4) routing classification/security screening ($4); (5) second-level security screening and licensing and review processing ($1); (6) initial bibliographic data entry ($17); (7) copying and mailing ($9); (8) performing processing section functions ($11); and (9) performing Hague file maintenance ($2).

Applying the ABI methodology discussed above, the Office has thus estimated the fiscal year 2012 unit cost to transmit an international design application and international fees to the International Bureau as the sum total of the aforementioned activities, resulting in a total unit cost of $118. Using the estimated CPI–U increase for fiscal years 2013, 2014 and 2015, the Office estimates the fiscal year 2015 unit cost to transmit the international design application and the international fees to the International Bureau is $126 ($118 multiplied by 1.066), which, when rounded to the nearest ten dollars, is a proposed fee for transmittal of $130. Additional information concerning the Office's analysis of the estimated fiscal year 2012 costs for receiving and transmitting international design applications and international fees to the International Bureau is available upon request.

Section 1.1031(b) provides that the Schedule of Fees, a list of individual designation fee amounts, and a fee calculator may be viewed on the Web site of the WIPO, available at: *http://www.wipo.int/hague.* Under the Hague Agreement, the International Bureau is responsible for collecting the required fees set forth in the Schedule of Fees annexed to the Regulations (Rule 27(1)) and the individual designation fees referred to in Rule 12(1)(a)(iii). Where the required fees have not been paid, the International Bureau will invite the applicant to pay the required fees to avoid abandonment of the application. *See* Article 8 and Rule 14. The fees set forth in the Schedule of Fees and the list of individual designation fee amounts may be viewed on the Web site of the WIPO, available at: *http://www.wipo.int/hague.* This Web site also includes a fee calculator tool to assist applicants in calculating the total amount of fees for filing an international design application.

Section 1.1031(c) provides that the following fees required by the International Bureau may be paid either directly to the International Bureau or through the Office as an office of indirect filing in the amounts specified on the WIPO Web site described in § 1.1031(b): (1) The international application fees (Rule 12(1)); and (2) the fee for descriptions exceeding 100 words (Rule 11(2)). The fees referred to in Hague Agreement Rule 12(1) include a basic fee, standard designation fees, individual designation fees, and a publication fee. Rule 12(3)(b) states that the Rule 12(1) reference to individual designation fees is construed as a reference to only the first part of the individual designation fee for any Contracting Party with a designation fee comprised of two parts.

Section 1.1031(d) provides that the fees referred to in § 1.1031(c) may be paid directly to the International Bureau in Swiss currency. *See* Rule 27(2)(a). Administrative Instructions to the Hague Agreement set forth the various

modes of payment accepted by the International Bureau. *See* Administrative Instruction 801. These include: (1) Payment by debit through an account established with the International Bureau; (2) payment into the Swiss postal check account or any of the specified bank accounts of the International Bureau; or (3) payment by credit card.

Section 1.1031(d) also provides for payment of the fees referred to in § 1.1031(c) through the Office as an office of indirect filing, provided such fees are paid no later than the date of payment of the transmittal fee required under § 1.1031(a). Any payment through the Office must be in U.S. dollars. Section 1.1031(d) also provides that applicants paying fees through the Office may be subject to a requirement by the International Bureau to pay additional amounts where the conversion from U.S. dollars to Swiss currency results in the International Bureau receiving less than the prescribed amounts. Under Rule 28(1), ''[a]ll payments made under these Regulations to the International Bureau shall be in Swiss currency irrespective of the fact that, where the fees are paid through an Office, such Office may have collected those fees in another currency.'' Consequently, the fees collected by the Office for forwarding to the International Bureau must be converted to Swiss currency. If the converted amount at the time the Office transfers the fees to the International Bureau in Swiss currency is less than the amount required by the International Bureau, the International Bureau may invite the applicant to pay the deficiency. Any payment in response to the invitation must be made directly to the International Bureau within the period set in the invitation.

The proposed rules do not provide for a fee for renewing an international registration with respect to the United States. Article 7 provides for a designation fee for each designated Contracting Party. Article 7(1) provides for a ''prescribed'' designation fee (also referred to as ''standard'' designation fee, *see* Rule 11). However, Article 7(2) allows a Contracting Party to make a declaration replacing the prescribed designation fee with an individual designation fee ''in connection with any international application in which it is designated, and in connection with the renewal of any international registration resulting from such an international application.'' Pursuant to Article 7(2), the amount of the individual designation fee may be fixed by the Contracting Party ''for the initial term of protection and for each term of renewal or for the maximum period of protection allowed by the Contracting Party concerned.'' Article 7(2) further provides that the individual designation fee may not be higher than the equivalent of the amount which the office of a Contracting Party would be entitled to receive for a grant of protection for an equivalent period to the same number of designs.

Thus, while Article 7(2) permits a Contracting Party to fix an individual designation fee for renewing an international registration in respect of that Contracting Party, it does not require such fee. Rather, the individual designation fee fixed by the Contracting Party may be for the maximum period of protection allowed by the Contracting Party. Furthermore, the PLTIA does not require payment of a fee for renewing an international registration with respect to the United States. In addition, the PLTIA does not require renewal of the international registration to obtain the maximum period of protection in the United States. *See, e.g.,* 35 U.S.C. 173 as amended by the PLTIA, 126 Stat. at 1532 (''Patents for designs shall be granted for the term of 15 years from the date of grant.''). Accordingly, the proposed rules do not provide a fee for renewing an international design application with respect to the United States.

The Office notes that Article 17(3) provides that any extension of the initial five-year term of protection accorded by an international registration is subject to renewal. However, the Hague Agreement allows a Contracting Party to provide greater protection under its national law than provided under the Hague Agreement. *See* Article 2(1) (''The provisions of this Act shall not affect the application of any greater protection which may be accorded by the law of a Contracting Party . . .''). Furthermore, the records of the diplomatic conference adopting the Hague Agreement make clear that renewal of the international registration for a designated Contracting Party that requires payment of a single designation fee for the entire 15-year (or more) period of protection is not required to obtain the full period of protection in that Contracting Party. *See WIPO Records of the Diplomatic Conference for the Adoption of a New Act of the Hague Agreement Concerning the International Deposit of Industrial Design (Geneva Act) June 16 to July 6, 1999,* 254, ¶ 15.08 (2002), discussing Article 15 of the Basic Proposal presented to the diplomatic conference which, after minor amendment, became Article 17 (''It would be compatible with paragraphs (1) to (3) for a Contracting Party to stipulate a single 15-year (or more) period and to require payment of an initial individual designation fee for the whole period. In such case, protection would be maintained in its territory for that whole period, whether the international registration were renewed or not.'').

*Section 1.1035:* Section 1.1035(a) is proposed to be added to provide, in accordance with Article 6 of the Hague Agreement, that the international design application may claim, under Article 4 of the Paris Convention, the priority of one or more earlier applications filed in or for any country party to that Convention or any Member of the World Trade Organization. Proposed § 1.1035(a) further provides, in accordance with Rule 7(5)(c), that the priority claim must contain an indication of the name of the office where such filing was made and of the date and, where available, the number of that filing, and where the priority claim relates to less than all the industrial designs contained in the international design application, the indication of those industrial designs to which the priority claim relates or does not relate.

While Article 6 of the Hague Agreement provides for priority under the Paris Convention, the Hague Agreement does not specifically provide for domestic benefit claims. Section 101(a) of the PLTIA adds 35 U.S.C. 386(c) to specifically provide for the benefit in accordance with the conditions and requirements of 35 U.S.C. 120 of the filing date of a prior national application, a prior international application as defined in 35 U.S.C. 351(c) designating the United States, or a prior international design application designating the United States. 126 Stat. at 1529–30. Accordingly, § 1.1035(b) is proposed to be added to provide that an international design application designating the United States may claim benefit under 35 U.S.C. 120, 121, 365(c) or 386(c) to an earlier filed application in accordance with § 1.78. It is noted that § 1.78 requires the domestic benefit claim to be included in an application data sheet (''ADS''), and that the Hague Agreement does not provide for submission of an ADS as an optional content item of the international design application. *See* Rules 7(5) and 7(6). Notwithstanding, if the ADS is included with the submission of the international design application to the Office as an indirect office, the ADS will be included in the national application file maintained by the Office as a designated office, and accordingly, will not have to

be submitted again. *See* discussion of § 1.14(j).

*Section 1.1041:* Section 1.1041 is proposed to be added to cover representation in an international design application.

Section 1.1041(a) provides that the applicant or the holder may appoint a representative before the International Bureau in accordance with Rule 3. With respect to who may be appointed to represent the applicant before the International Bureau, the Hague Agreement does not provide for any requirement as to professional qualification, nationality or domicile. The appointment may be made in the international design application or in a separate communication. *See* Rule 3(2).

Requirements as to the appointment of a representative before the office of a Contracting Party are outside the scope of the Hague Agreement, and are exclusively a matter for the Contracting Party. Accordingly, § 1.1041(b) is proposed to be added to provide that applicants of international design applications may be represented before the Office as an office of indirect filing by a practitioner registered (§ 11.6) or granted limited recognition (§ 11.9(a) or (b)) to practice before the Office (§ 11.6). Section 1.1041(b) further provides that such practitioner may act pursuant to § 1.34 or be appointed, in writing signed by the applicant, giving the practitioner power to act on behalf of the applicant and specifying the name and registration number or limited recognition number of each practitioner. Section 1.1041(b) also provides that an appointment of a representative made in the international design application pursuant to Rule 3(2) that complies with the requirements of this paragraph will be effective as an appointment before the Office as an office of indirect filing. For purposes of representation before the Office in an international design application that becomes a national application (*see* § 1.9(a)(1)), the regulations governing national applications shall apply. *See* § 1.1061(a).

*Section 1.1045:* Section 1.1045 is proposed to be added to set forth the procedures for transmittal of international design applications to the International Bureau. Section 101(a) of the PLTIA adds 35 U.S.C. 382, which states, in subsection (b): ''[s]ubject to chapter 17, international design applications shall be forwarded by the Patent and Trademark Office to the International Bureau, upon payment of a transmittal fee.'' 126 Stat. at 1528. Rule 13(1) requires an office of indirect filing to notify the applicant and the International Bureau of the receipt date of an international design application, and to notify the applicant that the international design application has been transmitted to the International Bureau. Accordingly, § 1.1045(a) is proposed to be added to provide that, subject to § 1.1045(b) and payment of the transmittal fee set forth in § 1.1031(a), transmittal of the international design application to the International Bureau shall be made by the Office as provided by Rule 13(1). Section 1.1045(a) further provides that at the same time as it transmits the international design application to the International Bureau, the Office shall notify the International Bureau of the date on which it received the application, and that the Office shall also notify the applicant of the date on which it received the international design application and the date on which it transmitted the application to the International Bureau.

Because transmittal of the international design application is subject to 35 U.S.C. chapter 17, § 1.1045(b) is proposed to be added to provide that no copy of an international design application may be transmitted to the International Bureau, a foreign designated office, or other foreign authority by the Office or the applicant, unless the applicable requirements of part 5 of this chapter have been satisfied.

Under the Hague Agreement, formalities review of the international design application is performed by the International Bureau, not the office of indirect filing. The functions of the office of indirect filing are de minimus, *i.e.,* receiving and transmitting the international design application and international fees. There is no provision in the Hague Agreement for filing follow-on submissions with the office of indirect filing. Accordingly, § 1.1045(c) is proposed to be added to provide that once transmittal of the international design application has been effected, except for matters properly before the USPTO as an office of indirect filing or as a designated office, all further correspondence concerning the application should be sent directly to the International Bureau, and that the Office will generally not forward communications to the International Bureau received after transmittal of the application to the International Bureau. Section 1.1045(c) further provides that any reply to an invitation sent to the applicant by the International Bureau must be filed directly with the International Bureau, and not with the Office, to avoid abandonment or other loss of rights under Article 8.

*Section 1.1051:* Section 1.1051 is proposed to be added to set forth conditions under which an applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application may be excused as to the United States upon a showing of unintentional delay. Section 101(a) of the PLTIA adds 35 U.S.C. 387, which gives the Director authority to prescribe such conditions, including the payment of the fee specified in 35 U.S.C. 41(a)(7), to excuse an applicant's failure to act within prescribed time limits in an international design application as to the United States where the delay was unintentional. 126 Stat. at 1530; *see* discussion of § 1.17(u), *supra.* Under proposed § 1.1051(a), a petition to excuse applicant's failure to act within the prescribed time limits must be accompanied by: (1) A copy of any invitation sent from the International Bureau setting a prescribed time limit for which applicant failed to timely act; (2) the reply required under § 1.1051(c), unless previously filed; (3) the fee as set forth in § 1.17(u); (4) a certified copy of the originally filed international design application, unless a copy of the international design application was previously communicated to the Office from the International Bureau or the international design application was filed with the Office as an office of indirect filing; and (5) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The requirements for a copy of the invitation sent from the International Bureau setting a prescribed time limit for which applicant failed to timely act, and for a certified copy of the originally filed international design application (unless a copy of the international design application was previously communicated to the Office from the International Bureau or the international design application was filed with the Office as an office of indirect filing) are needed because the Office may not have a record of the international design application. For example, the Office may not have a record where the international design application was filed directly with the International Bureau and was not published.

Section 1.1051(b) provides that any request for reconsideration or review of a decision refusing to excuse the applicant's failure to act within prescribed time limits in connection

with requirements pertaining to an international design application upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to excuse or within such time as set in the decision. Section 1.1051(b) further provides that, unless a decision indicates otherwise, the two-month time period may be extended under the provisions of § 1.136.

Section 1.1051(c) provides that the reply required may be: (1) The filing of a continuing application and, if the international design application has not been subject to international registration, a grantable petition under § 1.1023(b) to accord the international design application a filing date; or (2) a grantable petition under § 1.1052, where the international design application was filed with the Office as an office of indirect filing.

Under the Hague Agreement, the International Bureau reviews international design applications for compliance with the requirements of the treaty and Regulations. If these requirements have not been met, the International Bureau will invite the applicant to make the required corrections. *See* Hague Agreement Article 8(1). Depending on the correction required, failure to timely comply with the invitation will result in the application being considered abandoned or deemed not to contain the designation of the Contracting Party for which the deficiency relates. *See* Hague Agreement Article 8(2). The Hague Agreement does not provide for continued processing of an international design application that has been abandoned under Article 8 (or for processing the application for a particular Contracting Party after the designation of that Contracting Party has been deemed not to be contained in the application), based on the Office excusing applicant's failure to timely comply with the invitation pursuant to 35 U.S.C. 387. For example, the Hague Agreement does not provide for forwarding by the International Bureau to the applicant of a notification of refusal in an abandoned international application. Accordingly, the Office is proposing to provide relief under 35 U.S.C. 387 by permitting the applicant to file a continuing application claiming benefit to an international design application under the conditions of 35 U.S.C. 386(c) and 120. Upon grant of the petition under this section, applicant's delay will be excused for the purpose of establishing copendency or reinstatement of the U.S. designation in accordance with 35 U.S.C. 120, 386(c) and 388. The ability to file a continuing application is similarly provided in the rule governing the procedure for revival of an abandoned national application. *See* 37 CFR 1.137(c). Alternatively, § 1.1051(c) provides that the reply may be a grantable petition under § 1.1052 to convert the international design application to an application under 35 U.S.C. chapter 16.

*Section 1.1052:* Section 1.1052 is proposed to be added to set forth a procedure for converting an international design application designating the United States to a design application under 35 U.S.C. chapter 16. Section 101(a) of the PLTIA adds 35 U.S.C. 384(a), the second sentence of which provides: ''[n]otwithstanding the provisions of this part, any international design application designating the United States that otherwise meets the requirements of chapter 16 may be treated as a design application under chapter 16.'' 126 Stat. at 1529. The requirements for a filing date for a design application under 35 U.S.C. chapter 16 are set forth in § 1.53(b). Accordingly, § 1.1052(a) provides that an international design application designating the United States filed with the Office as an office of indirect filing and meeting the requirements under § 1.53(b) for a filing date for an application for a design patent may, on petition under this section, be converted to an application for a design patent under § 1.53(b) and accorded a filing date as provided therein.

Section 1.1052(a) further provides that the petition must be accompanied by the fee set forth in § 1.17(v) and be filed prior to publication of the international registration under Article 10(3). The requirement that a grantable petition be filed prior to publication under Article 10(3) is necessary in view of the timing requirements under the Hague Agreement to issue a notification of refusal and to avoid expending Office resources processing and examining the application under two different statutory schemes.

Section 1.1052(a) also provides that the conversion of an international design application to an application for a design patent under § 1.53(b) will not entitle applicant to a refund of the transmittal fee or any fee forwarded to the International Bureau, or the application of any such fee toward the filing fee, or any other fee, for the application for a design patent under § 1.53(b). In addition, § 1.1052(a) provides that the application for a design patent resulting from conversion of an international design application must also include the basic filing fee (§ 1.16(b)), the search fee (§ 1.16(l)), the examination fee (§ 1.16(p)), the inventor's oath or declaration (§§ 1.63 or 1.64), and a surcharge if required by § 1.16(f). These provisions are similar to those applicable to converting an application under 35 U.S.C. 111(b) to an application under 35 U.S.C. 111(a). *See* § 1.53(c)(3).

Section 1.1052(b) provides that an international design application will be treated as an application for a design patent under § 1.53(b) if a decision on petition under this section is granted prior to transmittal of the international design application to the International Bureau pursuant to § 1.1045. Otherwise, a decision granting a petition under this section will be effective to treat the international design application as an application for a design patent under § 1.53(b) only for purposes of the United States. Thus, pursuant to § 1.1052(b), if the Office grants the petition prior to transmittal of the international design application to the International Bureau, the Office will treat the international design application submission as an application for a design patent under § 1.53(b). Once transmittal of the application under § 1.1045 has occurred, the grant of the petition will only be effective as to the United States, and the International Bureau will continue to process the international design application under the provisions of the Hague Agreement.

Section 1.1052(c) provides that a petition under § 1.1052 will not be granted in an abandoned international design application absent a grantable petition under § 1.1051.

Sections 1.1061–1.1070 relate to national processing of an international design application designating the United States.

*Section 1.1061:* Section 1.1061(a) is proposed to be added to provide that the rules relating to applications for patents for other inventions or discoveries are also applicable to international design applications designating the United States, except as otherwise provided in chapter I of Title 37 of the CFR or required by the Articles or Regulations. Section 1.1061(a) is similar to current § 1.151 with respect to design applications under 35 U.S.C. chapter 16 (''The rules relating to applications for patents for other inventions or discoveries are also applicable to applications for patents for designs except as otherwise provided.''). Section 101(a) of the PLTIA adds 35 U.S.C. 389(b) to provide that all questions of procedures regarding international design applications designating the United States shall be determined as in the case of applications filed under 35 U.S.C. chapter 16, except where otherwise required by the Hague

Agreement and the Regulations (126 Stat. at 1530). Section 1.1061(b) is proposed to be added to identify, consistent with the Hague Agreement and the Regulations, certain regulations that do not apply to international design applications.

*Section 1.1062:* Section 1.1062(a) is proposed to be added to provide that the Office shall make an examination pursuant to Title 35 of the United States Code of an international design application designating the United States. Examination of international design applications designating the United States is mandated by 35 U.S.C. 389(a), which was added by section 101(a) of the PLTIA (126 Stat. at 1530).

Section 1.1062(a) further provides, in accordance with Article 12(1), that an international design application may not be refused on grounds that requirements relating to the form or contents of the international design application provided for in the Hague Agreement or the Regulations or additional to, or different from, those requirements have not been satisfied.

Section 1.1062(b) concerns the timing of certain actions in international design applications. Pursuant to Hague Agreement Article 12, where the conditions for the grant of protection under the law of the Contracting Party are not met, a notification of refusal of the effects of international registration must be communicated to the International Bureau within the prescribed period. Rule 18(1) sets forth the period for communicating the notification of refusal. While Rule 18(1)(a) sets forth the prescribed period as six months from the date of publication, this period may be extended by a Contracting Party pursuant to a declaration made under Rule 18(1)(b) (extending the six-month period to twelve months). Furthermore, the declaration under Rule 18(1)(b) may also include, *inter alia,* a statement under Rule 18(1)(c)(ii) (providing for the later communication of a decision regarding the grant of protection where a decision regarding the grant of protection was unintentionally delayed by the office of the Contracting Party). Section 1.1062(b) is proposed to be added to provide that for each international design application to be examined, the Office shall, subject to Rule 18(1)(c)(ii), send to the International Bureau within 12 months from the publication of the international registration under Rule 26(3) a notification of refusal (§ 1.1063) where it appears that the applicant is not entitled to a patent under the law with respect to any industrial design that is the subject of the international registration. The Office intends to send all notifications of refusal prior to the expiration of the 12-month period set forth in § 1.1062(b). Any failure by the Office to do so would be unintentional pursuant to Rule 18(1)(c)(ii).

The Office does not regard the failure to send the notification of refusal within the period referenced in § 1.1062(b) to confer patent rights or other effect under Article 14(2). The Hague Agreement is not self-executing, and the PLTIA provides for patent rights only upon issuance of a patent. *See* 35 U.S.C. 389(d) added by the PLTIA, 126 Stat. at 1531; *see also* S. Exec. Rep. No. 110–7, at 5 (''The proposed Act makes no substantive changes in U.S. design patent law with the exception of the following: the provision of limited rights to patent applicants between the date that their international design application is published by the IB and the date on which they are granted a U.S. patent based on that application; the extension of a patent term for designs from fourteen to fifteen years from grant; and allowing the USPTO to use a published international design registration as a basis for rejecting a subsequently filed national patent application that is directed at the same or a similar subject matter.''). Furthermore, the PLTIA requires an international design application that designates the United States to be examined by the Office pursuant to Title 35 of the United States Code. *See* 35 U.S.C. 389(a). Granting of patent rights without examination is inconsistent with 35 U.S.C. 389(a). The absence of a notification of refusal is not a patent. *See* 35 U.S.C. 153 (''Patents shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon and shall be recorded in the Patent and Trademark Office.'').

*Section 1.1063:* Section 1.1063(a) is proposed to be added to provide, in accordance with Rule 18(2), that a notification of refusal shall contain or indicate: (1) The number of the international registration; (2) the grounds on which the refusal is based; (3) where the grounds of refusal refer to similarity with an industrial design that is the subject of an earlier application or registration, a copy of a reproduction of the earlier industrial design and information concerning the earlier industrial design as required under Rule 18(2)(b)(iv); and (4) a time period for reply to the notification under § 1.134 and § 1.136 to avoid abandonment.

Pursuant to Article 12, the Office communicates the notification of refusal directly to the International Bureau, which then transmits without delay a copy of the notification of refusal to the holder. Rule 18(2)(vi) provides that the notification of refusal shall indicate whether the refusal is subject to review or appeal, and if so, the time limit for requesting review or appeal. Accordingly, the notification of refusal communicated by the Office will set a time period for reply under § 1.134 and § 1.136 to avoid abandonment.

Section 1.1063(b) is proposed to be added to provide that any reply to the notification of refusal must be filed directly with the Office and not through the International Bureau. Section 1.1063(b) further provides that the requirements of § 1.111 shall apply to a reply to a notification of refusal.

Under the Hague Agreement, any reply to the notification of refusal must be filed directly with the Office. The applicant may not file a reply to a notification of refusal through the International Bureau. Any further correspondence from the Office will normally be sent directly to the applicant. The procedures applicable to design applications under chapter 16 are generally applicable to international design applications after communication of the notification of refusal. *See* Article 12(3)(b) and 35 U.S.C. 389(b); *see also* WIPO, *Guide to the International Registration of Industrial Designs Under the Hague Agreement,* B.II.39, ¶ 9.23 (Jan. 2012) (''Where the holder of an international registration receives, through the International Bureau, a notification of refusal, he has the same rights and remedies (such as review of, or appeal against, the refusal) as if the industrial design had been filed directly with the Office that issued the notification of refusal. The international registration is, therefore, with respect to the Contracting Party concerned, subject to the same procedures as would apply to an application for registration filed with the Office of that Contracting Party.''). Thus, for example, the provisions of 35 U.S.C. 133 and §§ 1.134 through 1.136 govern the time to reply to an Office action, including a notification of refusal, and the consequence for failure to timely reply (*i.e.,* abandonment).

Because the procedures following the notification of refusal are governed by national practice, the failure of an applicant to renew an international registration pursuant to Article 17(2) does not affect the pendency status of an international design application before the Office. Otherwise, applicants in international design applications would not have the same rights and remedies as applicants in national design

applications, as required under Article 12(3)(b) and 35 U.S.C. 389. Similarly, the failure to renew a registration under Article 17(2) does not impact an applicant's ability to file a continuing application under 35 U.S.C. 120, 121, 365(c) or 386(c), as the critical inquiry under 35 U.S.C. 120 is the presence of copendency.

*Section 1.1064:* Section 1.1064 is proposed to be added to provide for requirements relating to only one independent and distinct design in international design applications.

Article 13 permits a Contracting Party whose law at the time it becomes party to this Act, requires that designs in the application conform to a requirement of unity of design, unity of production or unity of use, or that only one independent and distinct design may be claimed in a single application, to notify the Director General in a declaration. Section 1.1064(a) is proposed to provide that only one independent and distinct design may be claimed in an international design application designating the United States.

Section 1.1064(b) specifies that if the requirements under 1.1064(a) are not satisfied, the examiner shall in the notification of refusal or other Office action require the applicant in the reply to that action to elect one independent and distinct design for which prosecution on the merits shall be restricted. Section 1.1064(b) further specifies that such requirement will normally be made before any action on the merits but may be made at any time before the final action. Review of any such requirement is provided under §§ 1.143 and 1.144. The procedure set forth in 1.1064(b) is analogous to the procedures applicable to national applications. *See* § 1.142.

*Section 1.1066:* Section 1.1066 is proposed to be added to specify the correspondence address for an international design application. Unlike other types of applications before the Office, an applicant does not need to file any further submissions with the Office to initiate examination under § 1.1062 of an international design application designating the United States. Rather, published international design registrations that designate the United States will be systematically received from the International Bureau and examined in due course. Accordingly, § 1.1066(a) is proposed to set forth how the Office will establish the correspondence address for an international design application in the absence of a communication from the applicant changing the correspondence address. Specifically, § 1.1066(a) provides that, unless changed in accordance with § 1.1066(b), the Office will use as the correspondence address the address of the representative identified in the publication of the international registration, or if there is no address for the representative, the address of the applicant identified therein.

Section 1.1066(b) provides that the correspondence address may be changed by the parties set forth in § 1.33(b)(1) or (b)(3) in accordance with § 1.33(a).

Section 1.1066(c) is proposed to be added to provide that a reference in the rules to the correspondence address set forth in § 1.33(a) shall be construed to include a reference to § 1.1066 for a nonprovisional application that is an international design application.

*Section 1.1067:* Section 1.1067(a) is proposed to be added to provide for a title in an international design application. The Hague Agreement does not require that an international design application contain a title. The Office believes a title that identifies the article in which a design is embodied is helpful to the public in understanding the nature and use of the article embodying the design after the patent has issued. In addition, a U.S. patent must contain a title of the invention. *See* 35 U.S.C. 154(a)(1) (''Every patent shall contain a short title of the invention . . .''). Accordingly, pursuant to § 1.1067(a), the applicant may provide a title of the design that designates the particular article in an international design application that is before the Office for examination. Section 1.1067(a) further provides that where an international design application does not contain a title of the design, the Office may establish a title. In determining the title, the Office may look to the particular article specified in the claim.

Section 1.1067(b) is proposed to be added to provide that if the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment. This time period is not extendable under § 1.136. As explained above, Hague Agreement Rule 8, as recently passed by the Hague Union Assembly, accommodates current U.S. law regarding the inventor's oath or declaration. Where the presence of the required inventor's oath or declaration is verified by the International Bureau as part of its formalities review, the need to notify the applicant in a notice of allowability to provide the inventor's oath or declaration should be rare; *e.g.,* where an inventor added pursuant to § 1.48(a) has not executed an oath or declaration. *See* § 1.48(b).

*Section 1.1069:* Section 1.1069 is proposed to be added to provide for the sending of a notification of division to the International Bureau. Under Rule 18(3), where an international registration is divided before the office of a designated Contracting Party to overcome a ground of refusal stated in a notification of refusal, the office must notify the International Bureau with data concerning the division as specified in Administrative Instruction 502 (''notification of division''). Accordingly, § 1.1069(a) is proposed to be added to provide for the notification of division required under Rule 18. Section 1.1069(a) provides that where, following a notification of refusal requiring an election of an independent and distinct design, a divisional application claiming benefit under 35 U.S.C. 386(c) and 121 to the international design application is filed for the non-elected design(s), the Office shall notify the International Bureau. Section 1.1069(a) further provides that the notification to the International Bureau shall indicate: (1) The number of the international registration concerned; (2) the numbers of the industrial designs which have been the subject of the division with the Office concerned; and (3) the divisional application number(s).

Section 1.1069(b) is proposed to be added to provide that the Office may require the applicant, in a divisional application that is subject to a notification under § 1.1069(a), to identify the design in the international design application that is the subject of the divisional application. Because an international design application may contain up to 100 designs (*see* Rule 7(3)(v)) and, furthermore, uses a different numbering system for reproductions than is used in design applications filed under 35 U.S.C. chapter 16 (*see* Administrative Instruction 405 of the Hague Agreement), in some cases it may not be readily apparent how the design in the divisional application corresponds to the design of the parent international design application for purposes of the notification of division. Accordingly, in such cases, the Office may seek applicant's assistance to identify the corresponding design pursuant to § 1.1069(b).

*Section 1.1070:* Section 1.1070 is proposed to be added to provide for the

sending of a notification of invalidation to the International Bureau. Article 15 provides that the office of the Contracting Party in whose territory the effects of the international registration have been invalidated shall, where it is aware of the invalidation, notify the International Bureau of the invalidation (''notification of invalidation''). Rule 20 provides that where the effects of an international registration are invalidated in a designated Contracting Party and the invalidation is no longer subject to any review or appeal, the office of the Contracting Party whose competent authority has pronounced the invalidation shall, where it is aware of the invalidation, notify the International Bureau accordingly. Rule 20 further specifies the required contents of the notification of invalidation. In accordance with Article 15 and Rule 20, § 1.1070(a) provides that where a design patent that was granted from an international design application is invalidated in the United States, and the invalidation is no longer subject to any review or appeal, the patentee shall inform the Office. Section 1.1070(b) provides that after receiving a notification of invalidation under § 1.1070(a) or through other means, the Office will notify the International Bureau in accordance with Rule 20.

*Section 3.1:* Section 3.1 is proposed to be amended to include an international design application that designates the United States of America within the definition of ''application'' for purposes of Part 3 of Title 37 of the CFR. The effect of this definitional change will allow assignments (or other documents affecting title) of international design applications that designate the United States to be submitted to the Office for recording. The proposed change to § 3.1 is in response to 35 U.S.C. 385, added under the PLTIA, which provides that an international design application designating the United States has the effect, for all purposes, of an application for patent filed in the Office pursuant to 35 U.S.C. chapter 16. 126 Stat. at 1529.

*Section 3.21:* Section 3.21 is proposed to be amended to provide that an assignment relating to an international design application that designates the United States must identify the international design application by the international registration number or by the U.S. application number assigned to the international design application.

*Section 5.1:* Section 5.1(b) is proposed to be amended to change the definition of ''application'' as used in Part 5 of Title 37 of the CFR to include international design applications, and to provide consistency with the definitions in § 1.9. Section 5.1(b) is also proposed to be amended to include a definition of ''foreign application'' to permit simplification of other rules contained in Part 5.

*Section 5.3:* Section 5.3(d) is proposed to be amended to clarify that an international design application that is subject to a secrecy order will not be mailed, delivered, or otherwise transmitted to the international authorities or the applicant.

*Section 5.11:* The title of § 5.11 is proposed to be amended to more accurately describe when a foreign filing license is required. Section 5.11(a) is also proposed to be amended to clarify that a foreign filing license is not required to file an international design application in the Office as an office of indirect filing. Sections 5.11(b), (c), (e) and (f) are proposed to be amended to change ''foreign patent application'' to ''foreign application,'' as the provisions of 35 U.S.C. 184 are not limited to ''patent'' applications but include other types of applications; *e.g.*, registrations of industrial designs.

*Section 5.12:* Section 5.12 is proposed to be amended for consistency with the definition of application in § 5.1(b), and to indicate that the grant of a foreign filing license may be on an official notice other than the filing receipt; *e.g.*, in the case of international applications filed under the Patent Cooperation Treaty, on the ''Notification of the International Application Number and of the International Filing Date'' (Form PCT/RO/105).

*Section 5.13:* Section 5.13 is proposed to be amended to provide that a ''corresponding'' application for purposes of this section may be an international design application.

*Section 5.14:* Section 5.14(c) is proposed to be amended for clarity and internal consistency, as this subsection is directed to an ''application to be filed or exported abroad.''

*Section 5.15:* Section 5.15(a) is proposed to be amended for consistency with the definition of ''application'' in 5.1(b) and to remove redundancies.

*Section 11.10:* Section 11.10(b)(3)(iii) is proposed to be amended to include international design application in the definition of patent application for purposes of § 11.10.

**Rulemaking Considerations**

*A. Administrative Procedure Act:* This rulemaking implements title I of the PLTIA and the Hague Agreement. The changes proposed in this rulemaking (except for the setting of some fees) establish procedures for the filing, processing, and examination of international design applications and revise existing rules of practice to account for international design applications in accordance with title I of the PLTIA and to ensure that the rules of practice are consistent with the Hague Agreement. Therefore, the changes proposed in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment for these proposed changes are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these proposed changes for comment as it seeks the benefit of the public's views on the Office's proposed implementation of title I of the PLTIA and the Hague Agreement.

*B. Regulatory Flexibility Act:* For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

The notable changes proposed in this notice are to revise the rules of practice to implement title I of the PLTIA. The changes to the rules of practice proposed in this notice involve: (1) The establishment of procedures for the filing, processing, and examination of international design applications; and (2) the revision of existing rules of practice to account for international design applications. The proposed rules impose no additional required burdens on any applicant, since seeking design protection by filing an international design application is merely an optional alternative to seeking design protection by filing a national design application.

The proposed rules will benefit applicants by streamlining the process for obtaining international protection of an industrial design in Contracting Parties to the Hague Agreement by the filing of a single, standardized international design application in a single language.

As of 2013, there are 60 Contracting Parties that are members to the Hague system. In 2011, the most recent year available, 2,531 international design applications were filed via the Hague system. In that same year, 2,363 international design registrations issued through the Hague system. In comparison, the USPTO received 32,799 design applications in 2012, the most recent year for which data is available. In 2012, the USPTO issued 21,951 design patents. Approximately 49.6% of the design applications filed in 2012 were filed by an entity claiming small entity status. None of the proposed rules disproportionately affect small entities.

The fees and requirements referenced in this proposed rulemaking do not have a significant economic impact because they are comparable to the fees and requirements an applicant has in a national design application. Section 385 requires that an ''international design application designating the United States shall have the effect, for all purposes from its filing date . . . of an application for patent filed in the Patent and Trademark Office pursuant to chapter 16.'' Such fees include an issue fee, if applicable, and paid directly to the USPTO, and a petition fee for review of a filing date.

The USPTO proposes to set only two new fees based on cost recovery, as discussed in further detail in prior sections: A transmittal fee, payable to the USPTO for transmitting the international design application to WIPO when an applicant files the application with the USPTO as an office of indirect filing, and a conversion fee when an applicant seeks to have the Office treat an international design application as a national design application under 35 U.S.C. chapter 16. The transmittal fee is proposed to be set at $130. The USPTO estimates that approximately 1,000 applications will be filed indirectly with the USPTO annually and will thus require payment of a transmittal fee. Of these, the Office estimates that approximately 500 will be filed by an entity that is a small entity based on USPTO design application filings in 2012. The conversion fee is proposed to be set at $180. The USPTO estimates that approximately 20 applicants will pay the conversion fee annually, and of these, approximately 10 will be filed by an applicant that is a small entity.

The other fees mentioned in this proposed rulemaking are not USPTO fees at all, but rather, are created through the treaty process and WIPO's Common Regulations. For example, the USPTO does not collect and retain at the time of payment the following fees: WIPO Basic Fee, WIPO Publication Fee, WIPO Extra Word Fee, and Designation Fees (including the United States individual designation fee first part). Thus, the proposed rules referencing non-USPTO fees impose no economic impact upon applicants. The petition fee for excusable delay is set forth by statute, 35 U.S.C. 41(a)(7), as amended by 202(b)(1)(A) of the PLTIA, 126 Stat. 1535, at $850 for small entities and $1,700 for all other entities, beginning on December 18, 2013.

For the foregoing reasons, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

*C. Executive Order 12866 (Regulatory Planning and Review):* This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*D. Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

*E. Executive Order 13132 (Federalism):* This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*F. Executive Order 13175 (Tribal Consultation):* This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

*G. Executive Order 13211 (Energy Effects):* This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

*H. Executive Order 12988 (Civil Justice Reform):* This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

*I. Executive Order 13045 (Protection of Children):* This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

*J. Executive Order 12630 (Taking of Private Property):* This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

*K. Congressional Review Act:* Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

*L. Unfunded Mandates Reform Act of 1995:* The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local,

and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

*M. National Environmental Policy Act:* This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

*N. National Technology Transfer and Advancement Act:* The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

*O. Paperwork Reduction Act:* The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). New information will be collected and a new information collection request to authorize the collection of new information involved in this notice is being submitted to OMB under the title ''Hague Agreement.'' The proposed collection will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

The Office is submitting the information collection to OMB for its review and approval because this notice of proposed rulemaking will add the following to a collection of information for an international design application filed through the Office:

(1) Application for International Registration (§ 1.1022)
(2) Claim and Reproductions (§ 1.1021)
(3) Transmittal Letter (§§ 1.4, 1.5)
(4) Appointment of a Representative (§ 1.1041)
(5) Petition to Excuse a Failure to Comply with a Time Limit (§ 1.1051)
(6) Petition to Convert to a Design Application under 35 U.S.C. chapter 16 (§ 1.1052)
(7) Petition to Review a Filing Date (§ 1.1023(b))
(8) Fee Authorization (§ 1.25)
(9) Petition to the Commissioner (§§ 1.181, 182, and 183)

**I. Summary**

The Patent Law Treaties Implementation Act of 2012 (PLTIA) amends the patent laws to implement the provisions of the Geneva Act of the Hague Agreement Concerning International Registration of Industrial Designs (Hague Agreement) in title I, and the Patent Law Treaty (PLT) in title II. The Hague Agreement facilitates intellectual property protection for industrial designs by creators in member countries and intergovernmental organizations that are Contracting Parties to the Hague Agreement through a single standardized application filed directly with the International Bureau (IB) of the World Intellectual Property Organization (WIPO) or indirectly through an appropriate Contracting Party's Office, such as the United States Patent and Trademark Office. It is administered by the IB of WIPO located in Geneva, Switzerland.

Thus, under the Hague Agreement, a U.S. design applicant could file an international design application in English with the USPTO, which will forward the application to the IB. The industrial design may be eligible for protection both domestically and abroad in all Contracting Parties to the Agreement.

The IB ascertains whether the international design application complies with formal requirements, records the international design application in the international register, and publishes the international registration in the International Designs Bulletin. The international registration contains all of the data of the international application, any reproduction of the industrial design, date of the international registration, number of the international registration, and relevant class of the International Classification.

The IB will provide a copy of the publication of the international registration to each Contracting Party designated by the applicant. A designated Contracting Party may perform a substantive examination of the design application. If designated, the Office will perform a substantive examination of patentability of the international design application, as in the case of a regular design application filed under 35 U.S.C. chapter 16.

The Hague Agreement enables applicants from a Contracting Party to obtain protection of their designs with minimal formality and expense. Additionally, under the Hague Agreement, the international registration can be centrally maintained by the IB. For example, through the IB, applicants can record changes of their representative or changes in ownership, and renew their international registration.

**II. Data**

*Needs and Uses:* This information collection is necessary for design applicants to file an international design application under the Hague Agreement through the Office as an office of indirect filing pursuant 35 U.S.C. 382. The Office uses this information to process the international design application under the Hague Agreement and forward the design application to the IB. The IB ascertains whether the international application complies with the formal requirements, records the international design application in the international register, and publishes the international design application.

*Title of Collection:* International Design Applications (Hague Agreement).

*OMB Control Number:* 0651–00xx.

*Form Number(s):* WIPO DM/1.

*Type of Review:* New Collection.

*Method of Collection:* By mail, facsimile, hand delivery, or electronically to the Office.

*Affected Public:* Individuals or households; businesses or other for-profits; and not-for-profit institutions.

*Estimated Number of Respondents:* 3,310.

*Estimated Time per Response:* The Office estimates that the responses in this collection will take the public approximately 15 minutes (0.25 hours) to 6 hours.

*Estimated Total Annual Respondent Burden Hours:* 12,315 hours per year.

*Estimated Total Annual Respondent Cost Burden:* $4,790,535 per year.

*Estimated Total Annual Non-hour Respondent Cost Burden:* $2,403,302 per year.

**III. Solicitation**

The Office is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Office, including whether the information will have practical utility; (2) evaluate the accuracy of the Office's estimate of the burden, 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 collecting the 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.

Interested persons are requested to send comments regarding this information collection by January 28, 2014, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office; and (2) The Office of PCT Legal Administration by electronic mail message over the Internet addressed to *rbacares@uspto.gov,* or by mail addressed to: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Rafael Bacares, Legal Examiner, Office of PCT Legal Administration International Design Applications (Hague Agreement).''

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

*37 CFR Part 3*

Administrative practice and procedure, Patents, Trademarks.

*37 CFR Part 5*

Classified information, Foreign relations, Inventions and patents.

*37 CFR Part 11*

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 37 CFR parts 1, 3, 5 and 11 are proposed to be amended as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 is amended to read as follows:

**Authority:** 35 U.S.C. 2(b)(2) and the Patent Law Treaties Implementation Act of 2012.

■ 2. Section 1.4 is amended by revising paragraph (a)(2) to read as follows:

### § 1.4 Nature of correspondence and signature requirements.

(a) * * *

(1) * * *

(2) *Correspondence in and relating to a particular application or other proceeding in the Office.* See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of *ex parte* reexaminations of patents in subpart D, §§ 1.501 to 1.570; of international design applications in subpart I, §§ 1.1001 to 1.1070; of extension of patent term in subpart F, §§ 1.710 to 1.785; of *inter partes* reexaminations of patents in subpart H, §§ 1.902 to 1.997; and of the Patent Trial and Appeal Board in parts 41 and 42 of this title.

* * * * *

■ 3. Section 1.5 is amended by revising paragraph (a) to read as follows:

### § 1.5 Identification of patent, patent application, or patent-related proceeding.

(a) No correspondence relating to an application should be filed prior to receipt of the assigned application number (*i.e.,* U.S. application number, international application number, or international registration number as appropriate). When correspondence directed to the Patent and Trademark Office concerns a previously filed application for a patent, it must identify on the top page in a conspicuous location, the application number (consisting of the series code and the serial number; *e.g.,* 07/123,456), or the serial number and filing date assigned to that application by the Patent and Trademark Office, or the international application number of the international application, or the international registration number of an international design application. Any correspondence not containing such identification will be returned to the sender where a return address is available. The returned correspondence will be accompanied with a cover letter which will indicate to the sender that if the returned correspondence is resubmitted to the Patent and Trademark Office within two weeks of the mail date on the cover letter, the original date of receipt of the correspondence will be considered by the Patent and Trademark Office as the date of receipt of the correspondence. Applicants may use either the Certificate of Mailing or Transmission procedure under § 1.8 or the Express Mail procedure under § 1.10 for resubmissions of returned correspondence if they desire to have the benefit of the date of deposit in the United States Postal Service. If the returned correspondence is not resubmitted within the two-week period, the date of receipt of the resubmission will be considered to be the date of receipt of the correspondence. The two-week period to resubmit the returned correspondence will not be extended. In addition to the application number, all correspondence directed to the Patent and Trademark Office concerning applications for patent should also state the name of the first listed inventor, the title of the invention, the date of filing the same, and if known, the group art unit or other unit within the Patent and Trademark Office responsible for considering the correspondence and the name of the examiner or other person to which it has been assigned.

* * * * *

■ 4. Section 1.6 is amended by revising paragraphs (d)(3), (d)(4), and (d)(6) to read as follows:

### § 1.6 Receipt of correspondence.

* * * * *

(d) * * *

(3) Correspondence that cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D), (F), (I), and (K) and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile;

(4) Color drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.173, 1.437, or 1.1026;

* * * * *

(6) Correspondence to be filed in an application subject to a secrecy order under §§ 5.1 through 5.5 of this chapter and directly related to the secrecy order content of the application;

* * * * *

■ 5. Section 1.8 is amended by revising paragraphs (a)(2)(i)(I) and (a)(2)(i)(J), and adding a new paragraph (a)(2)(i)(K), to read as follows:

### § 1.8 Certificate of mailing or transmission.

(a) * * *

(2) * * *

(i) * * *

(I) The filing of a third-party submission under § 1.290;

(J) The calculation of any period of adjustment, as specified in § 1.703(f); and

(K) The filing of an international design application.

* * * * *

■ 6. Section 1.9 is amended by revising paragraphs (a)(1) and (a)(3), and adding new paragraphs (l), (m), and (n) to read as follows:

### § 1.9 Definitions.

(a) * * *

(1) A national application as used in this chapter means either a U.S. application for patent which was filed

in the Office under 35 U.S.C. 111, an international application filed under the Patent Cooperation Treaty in which the basic national fee under 35 U.S.C. 41(a)(1)(F) has been paid, or an international design application filed under the Hague Agreement in which the Office has received a copy of the international registration pursuant to Hague Agreement Article 10.

* * * * *

(3) A nonprovisional application as used in this chapter means either a U.S. national application for patent which was filed in the Office under 35 U.S.C. 111(a), an international application filed under the Patent Cooperation Treaty in which the basic national fee under 35 U.S.C. 41(a)(1)(F) has been paid, or an international design application filed under the Hague Agreement in which the Office has received a copy of the international registration pursuant to Hague Agreement Article 10.

* * * * *

(l) Hague Agreement as used in this chapter means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted at Geneva, Switzerland, on July 2, 1999, and Hague Agreement Article as used in this chapter means an Article under the Hague Agreement.

(m) Hague Agreement Regulations as used in this chapter means the Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement; and Hague Agreement Rule as used in this chapter means one of the Hague Agreement Regulations.

(n) An international design application as used in this chapter means an application for international registration of a design filed under the Hague Agreement. Unless otherwise clear from the wording, reference to ''design application'' or ''application for a design patent'' in this chapter includes an international design application that designates the United States.

■ 7. Section 1.14 is amended by revising the introductory text of paragraph (a)(1), revising paragraphs (a)(1)(ii) through (a)(1)(vii), and adding a new paragraph (j), to read as follows:

**§ 1.14 Patent applications preserved in confidence.**

(a) * * *

(1) Records associated with patent applications (see paragraph (g) for international applications and paragraph (j) for international design applications) may be available in the following situations:

* * * * *

(ii) *Published abandoned applications.* The file of an abandoned published application is available to the public as set forth in § 1.11(a). A copy of the application-as-filed, the file contents of the published application, or a specific document in the file of the published application may be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b).

(iii) *Published pending applications.* A copy of the application-as-filed, the file contents of the application, or a specific document in the file of a pending published application may be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b). If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy. The Office will not provide access to the paper file of a pending application that has been published, except as provided in paragraph (c) or (i) of this section.

(iv) *Unpublished abandoned applications (including provisional applications) that are identified or relied upon.* The file contents of an unpublished, abandoned application may be made available to the public if the application is identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). An application is considered to have been identified in a document, such as a patent, when the application number or serial number and filing date, first named inventor, title and filing date or other application specific information are provided in the text of the patent, but not when the same identification is made in a paper in the file contents of the patent and is not included in the printed patent. Also, the file contents may be made available to the public, upon a written request, if benefit of the abandoned application is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent, or has published as a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). A copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application may be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)).

(v) *Unpublished pending applications (including provisional applications) whose benefit is claimed.* A copy of the file contents of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the benefit of the application is claimed under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent, or in an application that has published as a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). A copy of the application-as-filed, or a specific document in the file of the pending application may also be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (i) of this section.

(vi) *Unpublished pending applications (including provisional applications) that are incorporated by reference or otherwise identified.* A copy of the application as originally filed of an unpublished pending application may be provided to any person, upon written request and payment of the appropriate fee (§ 1.19(b)), if the application is incorporated by reference or otherwise identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3). The Office will not provide access to the paper file of a pending application, except as provided in paragraph (c) or (i) of this section.

(vii) *When a petition for access or a power to inspect is required.* Applications that were not published or patented, that are not the subject of a benefit claim under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3), or are not identified in a U.S. patent, a statutory invention

registration, a U.S. patent application publication, an international publication of an international application under PCT Article 21(2), or a publication of an international registration under Hague Agreement Article 10(3), are not available to the public. If an application is identified in the file contents of another application, but not the published patent application or patent itself, a granted petition for access (see paragraph (i)) or a power to inspect (see paragraph (c)) is necessary to obtain the application, or a copy of the application.

* * * * *

(j) *International design applications.*

(1) With respect to an international design application maintained by the Office in its capacity as a designated office (§ 1.1003) for national processing, the records associated with the international design application may be made available as provided under paragraphs (a) through (i) of this section.

(2) With respect to an international design application maintained by the Office in its capacity as an office of indirect filing (§ 1.1002), the records of the international design application may be available under paragraph (j)(1) of this section where contained in the file of the international design application maintained by the Office for national processing. Also, if benefit of the international design application is claimed under 35 U.S.C. 386(c) in a U.S. patent or published application, the file contents may be made available to the public, or a copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application may be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)).

■ 8. Section 1.16 is amended by revising the introductory text of paragraphs (b), (l) and (p) to read as follows:

**§ 1.16 National application filing, search, and examination fees.**

* * * * *

(b) Basic fee for filing each application under 35 U.S.C. 111 for an original design patent:

* * * * *

(l) Search fee for each application under 35 U.S.C. 111 for an original design patent:

* * * * *

(p) Examination fee for each application under 35 U.S.C. 111 for an original design patent:

* * * * *

■ 9. Section 1.17 is amended by revising paragraph (f) and adding new paragraphs (u) and (v) to read as follows:

**§ 1.17 Patent application and reexamination processing fees.**

* * * * *

(f) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)—$100.00
By a small entity (§ 1.27(a))—$200.00
By other than a small or micro entity—$400.00

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.57(a)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

§ 1.1023—to review the filing date of an international design application.

* * * * *

(u) For filing a petition to excuse applicant's failure to act within prescribed time limits in an international design application (35 U.S.C. 387 and § 1.1051):

By a small entity (§ 1.27(a))—$850.00
By other than a small entity—$1,700.00

(v) For filing a petition to convert an international design application to a design application under 35 U.S.C. chapter 16 (35 U.S.C. 384 and § 1.1052)—$180.00

■ 10. Section 1.18 is amended by adding a new paragraph (b)(3) to read as follows:

**§ 1.18 Patent post allowance (including issue) fees.**

* * * * *

(b) * * *

(3) For an international design application designating the United States, where an issue fee is paid through the International Bureau (Hague Agreement Rule 12(3)(c)) as an alternative to paying the issue fee under paragraph (b)(1): The amount specified on the Web site of the World Intellectual Property Organization, available at: *http://www.wipo.int/hague.*

* * * * *

■ 11. Section 1.25 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 1.25 Deposit accounts.**

* * * * *

(b) Filing, issue, appeal, international-type search report, international application processing, international design application fees (§ 1.1031), petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. * * *

* * * * *

■ 12. Section 1.27 is amended by revising paragraph (c)(3) to read as follows:

**§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.**

* * * * *

(c) * * *

(3) *Assertion by payment of the small entity basic filing, basic transmittal, basic national fee, or international search fee.* The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), 1.16(b), 1.16(c), 1.16(d), 1.16(e), the small entity transmittal fee set forth in § 1.445(a)(1), the small entity international search fee set forth in § 1.445(a)(2) to a Receiving Office other than the United States Receiving Office in the exact amount established for that Receiving Office pursuant to PCT Rule 16, the small entity first part of the individual designation fee for the United States (Hague Agreement Rule 12(1)(a)(iii)) to the International Bureau in an international design application, or the small entity basic national fee set forth in § 1.492(a), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing, basic transmittal, or basic national fee is inadvertently selected in error.

* * * * *

■ 13. Section 1.29 is amended by revising the first sentence of paragraph (e) to read as follows:

**§ 1.29 Micro entity status.**

* * * * *

(e) Micro entity status is established in an application by filing a micro entity certification in writing complying with the requirements of either paragraph (a) or paragraph (d) of this section and signed either in compliance with § 1.33(b) or in an international design application by a person authorized to represent the applicant under § 1.1041(a) before the International Bureau where the micro entity certification is filed with the International Bureau. * * *

* * * * *

■ 14. Section 1.41 is amended by adding a new paragraph (f) to read as follows:

**§ 1.41 Inventorship.**

* * * * *

(f) The inventorship of an international design application designating the United States is the creator or creators set forth in the publication of the international registration under Hague Agreement Article 10(3). Any correction of inventorship must be pursuant to § 1.48.

■ 15. Section 1.46 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1.46 Application for patent by an assignee, obligated assignee, or a person who otherwise shows sufficient proprietary interest in the matter.**

* * * * *

(b) If an application under 35 U.S.C. 111 is made by a person other than the inventor under paragraph (a) of this section, the application must contain an application data sheet under § 1.76 specifying in the applicant information section (§ 1.76(b)(7)) the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter. If an application entering the national stage under 35 U.S.C. 371 or an international design application before the United States as a designated office is applied for by a person other than the inventor under paragraph (a) of this section, the assignee, person to whom the inventor is under an obligation to assign the invention, or person who otherwise shows sufficient proprietary interest in the matter must have been identified as the applicant for the United States in the international stage of the international application or as the holder in the publication of the international registration under Hague Agreement Article 10(3).

(c) Any request to correct or update the name of the applicant under this section must include an application data sheet under § 1.76 specifying the correct or updated name of the applicant in the applicant information section (§ 1.76(b)(7)) except that correction of the name of the applicant may be made pursuant to Hague Agreement Article 16 for an international design application. Any request to replace the original applicant with an applicant under this section must include an application data sheet under § 1.76 specifying the applicant in the applicant information section (§ 1.76(b)(7)) and comply with §§ 3.71 and 3.73 of this title.

* * * * *

■ 16. Section 1.53 is amended by revising paragraph (d)(1)(ii) to read as follows:

**§ 1.53 Application number, filing date, and completion of application.**

* * * * *

(d) * * *

(1) * * *

(ii) The prior nonprovisional application is a design application, but not an international design application, that is complete as defined by § 1.51(b); and

* * * * *

■ 17. Section 1.55 is amended by revising paragraph (b) and adding a new paragraph (m) to read as follows:

**§ 1.55 Claim for foreign priority.**

* * * * *

(b) *Time for filing subsequent application.* The nonprovisional application must be filed not later than twelve months (six months in the case of a design application) after the date on which the foreign application was filed, or be entitled to claim the benefit under 35 U.S.C. 120, 121, 365(c), or 386(c) of an application that was filed not later than twelve months (six months in the case of a design application) after the date on which the foreign application was filed. The twelve-month period is subject to 35 U.S.C. 21(b) (and § 1.7(a)) and PCT Rule 80.5, and the six-month period is subject to 35 U.S.C. 21(b) (and § 1.7(a)) and Hague Agreement Rule 4(4).

* * * * *

(m) *Time for filing priority claim and certified copy of foreign application in an international design application designating the United States.* In an international design application designating the United States, the claim for priority may be made in accordance with the Hague Agreement and the Hague Agreement Regulations. For purposes of the United States, the priority claim may also be presented in an application data sheet (§ 1.76(b)(6)), filed directly with the Office after publication of the international registration under Hague Agreement Article 10(3), identifying the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The priority claim and certified copy must be furnished in accordance with the time period and other conditions set forth in paragraph (g) of this section.

■ 18. Section 1.57 is amended by revising the introductory text of paragraph (a), redesignating paragraph (a)(3) as paragraph (a)(4), and adding a new paragraph (a)(3) to read as follows:

**§ 1.57 Incorporation by reference.**

(a) Subject to the conditions and requirements of this paragraph, if all or a portion of the specification or drawing(s) is inadvertently omitted from an application, but the application contains a claim under § 1.55 for priority of a prior-filed foreign application, or a claim under § 1.78 for the benefit of a prior-filed provisional, nonprovisional, international application, or international design application, that was present on the filing date of the application, and the inadvertently omitted portion of the specification or drawing(s) is completely contained in the prior-filed application, the claim under § 1.55 or § 1.78 shall also be considered an incorporation by reference of the prior-filed application as to the inadvertently omitted portion of the specification or drawing(s).

* * * * *

(3) Any amendment to an international design application that designates the United States pursuant to this paragraph shall be effective only as to the United States, and shall have no effect on the filing date of the application.

* * * * *

■ 19. Section 1.76 is amended by revising paragraph (b)(6) to read as follows:

**§ 1.76 Application data sheet.**

* * * * *

(b) * * *

(6) *Foreign priority information.* This information includes the application number, country (or intellectual property authority), and filing date of each foreign application for which priority is claimed. Providing this information in the application data sheet constitutes the claim for priority as required by 35 U.S.C. 119(b) and § 1.55.

* * * * *

■ 20. Section 1.78 is amended by revising the introductory text of paragraphs (c) and (d), revising paragraphs (c)(1)(i) through (c)(1)(ii) and (c)(2), and adding new paragraph (c)(1)(iii) and (c)(7) to read as follows:

**§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.**

* * * * *

(c) *Claims under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed nonprovisional, international application, or international design application.* An applicant in a nonprovisional application, an

international application designating the United States, or an international design application designating the United States may claim the benefit of one or more prior-filed copending nonprovisional applications, international applications designating the United States, or international design applications designating the United States under the conditions set forth in 35 U.S.C. 120, 121, 365(c), or 386(c) and this section.

(1) * * *

(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States;

(ii) A nonprovisional application under 35 U.S.C. 111(a) that is entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) for which the basic filing fee set forth in § 1.16 has been paid within the pendency of the application; or

(iii) An international design application designating the United States and entitled to a filing date as set forth in § 1.1023.

(2) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application, international application designating the United States, or international design application designating the United States that claims the benefit of one or more prior-filed nonprovisional applications, international applications designating the United States, or international design applications designating the United States must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number), international application number and international filing date, or international registration number and international registration date. If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76(b)(5)). The reference also must identify the relationship of the applications, namely, whether the later-filed application is a continuation, divisional, or continuation-in-part of the prior-filed nonprovisional application, international application, or international design application.

* * * * *

(7) Where benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) to an international application or an international design application which designates but did not originate in the United States, the Office may require a certified copy of such application together with an English translation thereof if filed in another language.

(d) *Delayed claims under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed nonprovisional application, international application, or international design application.* If the reference required by 35 U.S.C. 120 and paragraph (c)(2) of this section is presented after the time period provided by paragraph (c)(3) of this section, the claim under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed copending nonprovisional application, international application designating the United States, or international design application designating the United States may be accepted if the reference identifying the prior-filed application by application number, international application number and international filing date, or international registration number and filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed application must be accompanied by:

* * * * *

■ 21. Section 1.84 is amended by revising paragraph (y) to read as follows:

**§ 1.84 Standards for drawings.**

* * * * *

(y) *Types of drawings.* See § 1.152 for design drawings, § 1.1026 for international design reproductions, § 1.165 for plant drawings, and § 1.173(a)(2) for reissue drawings.

■ 22. Section 1.85 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 1.85 Corrections to drawings.**

(a) A utility or plant application will not be placed on the files for examination until objections to the drawings have been corrected. Except as provided in § 1.215(c), any patent application publication will not include drawings filed after the application has been placed on the files for examination. Unless applicant is otherwise notified in an Office action, objections to the drawings in a utility or plant application will not be held in abeyance, and a request to hold objections to the drawings in abeyance will not be considered a *bona fide* attempt to advance the application to final action (§ 1.135(c)). If a drawing in a design application meets the requirements of § 1.84(e), (f), and (g) and is suitable for reproduction, but is not otherwise in compliance with § 1.84, the drawing may be admitted for examination. Similarly, if a drawing in an international design application designating the United States meets the requirements of § 1.1026, the drawing may be admitted for examination.

* * * * *

(c) If a corrected drawing is required or if a drawing does not comply with § 1.84 or § 1.1026 at the time an application is allowed, the Office may notify the applicant in a notice of allowability and set a three-month period of time from the mail date of the notice of allowability within which the applicant must file a corrected drawing in compliance with § 1.84 or § 1.1026, whichever is appropriate, to avoid abandonment. This time period is not extendable under § 1.136 (see § 1.136(c)).

■ 23. Section 1.97 is amended by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5), respectively, and adding a new paragraph (b)(3) to read as follows:

**§ 1.97 Filing of information disclosure statement.**

* * * * *

(b) * * *

(3) Within three months of the date of publication of the international registration under Hague Agreement Article 10(3) in an international design application;

* * * * *

■ 24. Section 1.105 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

**§ 1.105 Requirements for information.**

(a)(1) In the course of examining or treating a matter in a pending or abandoned application, in a patent, in a supplemental examination proceeding, or in a reexamination proceeding, the examiner or other Office employee may require the submission, from individuals identified under § 1.56(c), or any assignee, of such information as may be reasonably necessary to properly examine or treat the matter, for example:

* * * * *

■ 25. Section 1.114 is amended by redesignating paragraph (e)(5) as paragraph (e)(6), revising paragraph (e)(4), and adding new paragraph (e)(5) to read as follows:

**§ 1.114 Request for continued examination.**

* * * * *

(e) * * *

(4) An application for a design patent;

(5) An international design application; or

(6) A patent under reexamination.

■ 26. Section 1.155 is amended by revising paragraph (a)(1) to read as follows:

**§ 1.155 Expedited examination of design applications.**

(a) * * *

(1) The application must include drawings in compliance with § 1.84, or for an international design application that designates the United States, published pursuant to Hague Agreement Article 10(3);

* * * * *

■ 27. Section 1.211 is amended by revising paragraph (b) to read as follows.

**§ 1.211 Publication of applications.**

* * * * *

(b) Provisional applications under 35 U.S.C. 111(b) shall not be published, and design applications under 35 U.S.C. chapter 16, international design applications under 35 U.S.C. chapter 38, and reissue applications under 35 U.S.C. chapter 25 shall not be published under this section.

* * * * *

■ 28. Section 1.312 is revised to read as follows.

**§ 1.312 Amendments after allowance.**

No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment filed pursuant to this section must be filed before or with the payment of the issue fee, and may be entered on the recommendation of the primary examiner, approved by the Director, without withdrawing the application from issue. For purposes of this section, where the issue fee is paid in an international design application through the International Bureau, the date of payment of the issue fee will be the date the issue fee is recorded by the Office.

■ 29. Subpart I to part 1 is added to read as follows:

**Subpart I—International Design Application**

**General Information**

Sec.

1.1001 Definitions related to international design applications.
1.1002 The United States Patent and Trademark Office as an office of indirect filing.
1.1003 The United States Patent and Trademark Office as a designated office.
1.1004 The International Bureau.

**Who May File An International Design Application**

1.1011 Applicant for international design application.

**The International Design Application**

1.1021 Contents of the international design application.
1.1022 Form and signature.
1.1023 Filing date of an international design application in the United States.
1.1024 The description.
1.1025 The claim.
1.1026 Reproductions.
1.1027 Specimens.

**Fees**

1.1031 International design application fees.

**Priority**

1.1035 The priority claim in an international design application.

**Representation**

1.1041 Representation in an international design application.

**Transmittal of the International Design Application to the International Bureau**

1.1045 Procedures for transmittal of international design application to the International Bureau.

**Relief From Prescribed Time Limits; Conversion to a design Application Under 35 U.S.C. Chapter 16**

1.1051 Relief from prescribed time limits.
1.1052 Conversion to a design application under 35 U.S.C. chapter 16.

**National Processing of International Design Applications**

1.1061 Rules applicable.
1.1062 Examination.
1.1063 Notification of Refusal.
1.1064 One independent and distinct design.
1.1066 Correspondence address for an international design application.
1.1067 Title and the inventor's oath or declaration.
1.1069 Notification of Division.
1.1070 Notification of Invalidation.

## Subpart I — International Design Application

## General Information

**§ 1.1001 Definitions related to international design applications.**

(a) *Article* as used in this subpart means an article of the Hague Agreement;

(b) *Regulations* as used in this subpart means the ''Common Regulations Under the 1999 Act and the 1960 Act of the Hague Agreement'';

(c) *Rule* as used in this subpart means one of the Regulations;

(d) *Administrative Instructions* as used in this subpart means the Administrative Instructions referred to in Rule 34;

(e) *1960 Act* as used in this subpart means the Act signed at the Hague on November 28, 1960, of the Hague Agreement;

(f) Other terms and expressions in subpart I not defined in this section are as defined in Article 1, Rule 1, and 35 U.S.C. 381.

**§ 1.1002 The United States Patent and Trademark Office as an office of indirect filing.**

(a) The United States Patent and Trademark Office, as an office of indirect filing, shall accept international design applications where the applicant's Contracting Party is the United States.

(b) The major functions of the United States Patent and Trademark Office as an office of indirect filing include:

(1) Receiving and according a receipt date to international design applications;

(2) Collecting and, when required, transmitting fees due for processing international design applications;

(3) Determining compliance with applicable requirements of part 5 of this chapter; and

(4) Transmitting an international design application to the International Bureau, unless prescriptions concerning national security prevent the application from being transmitted.

**§ 1.1003 The United States Patent and Trademark Office as a designated office.**

(a) The United States Patent and Trademark Office will act as a designated office (''United States Designated Office'') for international design applications in which the United States has been designated as a Contracting Party in which protection is sought.

(b) The major functions of the United States Designated Office include:

(1) Accepting for national examination international design applications which satisfy the requirements of the Hague Agreement, the Regulations and the regulations;

(2) Performing an examination of the international design application in accordance with 35 U.S.C. chapter 16; and

(3) Communicating the results of examination to the International Bureau.

**§ 1.1004 The International Bureau.**

(a) The International Bureau is the World Intellectual Property Organization located at Geneva, Switzerland. It is the international intergovernmental organization which acts as the coordinating body under the Hague Agreement and the Regulations.

(b) The major functions of the International Bureau include:

(1) Receiving international design applications directly from applicants and indirectly from an office of indirect filing;

(2) Collecting required fees and crediting designation fees to the accounts of the Contracting Parties concerned;

(3) Reviewing international design applications for compliance with prescribed formal requirements;

(4) Translating international design applications into the required languages for recordation and publication;

(5) Recording international design applications in the International Register;

(6) Publishing international design applications in the International Designs Bulletin; and

(7) Sending copies of the publication of the international registration to each designated office.

## Who May File an International Design Application

### § 1.1011 Applicant for an international design application.

(a) Only persons who are nationals of the United States or who have a domicile, a habitual residence or a real and effective industrial or commercial establishment in the territory of the United States may file international design applications through the United States Patent and Trademark Office.

(b) Although the United States Patent and Trademark Office will accept international design applications filed by any person referred to in paragraph (a) of this section, an international design application designating the United States may be refused by the Office as a designated office if the applicant is not a person qualified under 35 U.S.C. chapter 11 to be an applicant.

## The International Design Application

### § 1.1021 Contents of the international design application.

(a) *Mandatory contents.* The international design application shall be in English, French or Spanish (Rule 6) and shall contain or be accompanied by:

(1) A request for international registration under the Hague Agreement (Article 5(1)(i));

(2) The prescribed data concerning the applicant (Article 5(1)(ii) and Rule 7(3)(i) and (ii));

(3) The prescribed number of copies of a reproduction or, at the choice of the applicant, of several different reproductions of the industrial design that is the subject of the international design application, presented in the prescribed manner; however, where the industrial design is two-dimensional and a request for deferment of publication is made in accordance with Article 5(5), the international design application may, instead of containing reproductions, be accompanied by the prescribed number of specimens of the industrial design (Article 5(1)(iii));

(4) An indication of the product or products that constitute the industrial design or in relation to which the industrial design is to be used, as prescribed (Article 5(1)(iv) and Rule 7(3)(iv));

(5) An indication of the designated Contracting Parties (Article 5(1)(v));

(6) The prescribed fees (Article 5(1)(vi) and Rule 12(1));

(7) The Contracting Party or Parties in respect of which the applicant fulfills the conditions to be the holder of an international registration (Rule 7(3)(iii));

(8) The number of industrial designs included in the international design application, which may not exceed 100, and the number of reproductions or specimens of the industrial designs accompanying the international design application (Rule 7(3)(v));

(9) The amount of the fees being paid and the method of payment, or instructions to debit the required amount of fees to an account opened with the International Bureau, and the identification of the party effecting the payment or giving the instructions (Rule 7(3)(vii)); and

(10) An indication of applicant's Contracting Party as required under Rule 7(4)(a).

(b) *Additional mandatory contents required by certain Contracting Parties.*

(1) Where the international design application contains the designation of a Contracting Party that requires, pursuant to Article 5(2), any of the following elements, then the international design application shall contain such required element(s):

(i) Indications concerning the identity of the creator of the industrial design that is the subject of that application (Rule 11(1));

(ii) A brief description of the reproduction or of the characteristic features of the industrial design that is the subject of that application (Rule 11(2));

(iii) A claim (Rule 11(3)).

(2) Where the international design application contains the designation of a Contracting Party that has made a declaration under Rule 8(1), then the international application shall contain the statement, document, oath or declaration specified in that declaration (Rule 7(4)(c)).

(c) *Optional contents.* The international design application may contain:

(1) Two or more industrial designs, subject to the prescribed conditions (Article 5(4) and Rule 7(7));

(2) A request for deferment of publication (Article 5(5) and Rule 7(5)(e));

(3) An element referred to in item (i) or (ii) of Article 5(2)(b) of the Hague Agreement or in Article 8(4)(a) of the 1960 Act even where that element is not required in consequence of a notification in accordance with Article 5(2)(a) of the Hague Agreement or in consequence of a requirement under Article 8(4)(a) of the 1960 Act (Rule 7(5)(a));

(4) The name and address of applicant's representative, as prescribed (Rule 7(5)(b));

(5) A claim of priority under Article 4 of the Paris Convention, as prescribed (Rule 7(5)(c));

(6) A declaration, for purposes of Article 11 of the Paris Convention, that the product or products which constitute the industrial design or in which the industrial design is incorporated have been shown at an official or officially recognized international exhibition, together with the place where the exhibition was held and the date on which the product or products were first exhibited there and, where less than all the industrial designs contained in the international design application are concerned, the indication of those industrial designs to which the declaration relates or does not relate (Rule 7(5)(d));

(7) Any declaration, statement or other relevant indication as may be specified in the Administrative Instructions (Rule 7(5)(f));

(8) A statement that identifies information known by the applicant to be material to the eligibility for protection of the industrial design concerned (Rule 7(5)(g));

(9) A proposed translation of any text matter contained in the international design application for purposes of recording and publication (Rule 6(4)).

(d) *Required contents where the United States is designated.* In addition to the mandatory requirements set forth in paragraph (a) of this section, an international design application that designates the United States shall contain or be accompanied by:

(1) A claim (§§ 1.1021(b)(1)(iii) and 1.1025);

(2) Indications concerning the identity of the creator (Rule 11(1)); and

(3) The inventor's oath or declaration (§§ 1.63 and 1.64). The requirements in § 1.63(b) and § 1.64(b)(4) to identify each inventor by his or her legal name, mailing address, and residence, if an inventor lives at a location which is different from the mailing address, and the requirement in § 1.64(b)(2) to identify the residence and mailing address of the person signing the substitute statement, will be considered satisfied by the presentation of such information in the international design

application prior to international registration.

**§ 1.1022 Form and signature.**

(a) The international design application shall be presented on the official form or any form having the same contents and format (Rules 7(1) and 1(vi)).

(b) The international design application shall be signed by the applicant.

**§ 1.1023 Filing date of an international design application in the United States.**

(a) Subject to paragraph (b) of this section, the filing date of an international design application in the United States is the date of international registration determined by the International Bureau under the Hague Agreement (35 U.S.C. 384 and 381(a)(5)).

(b) Where the applicant believes the international design application is entitled under the Hague Agreement to a filing date in the United States other than the date of international registration, the applicant may petition the Director under this paragraph to accord the international design application a filing date in the United States other than the date of international registration. Such petition must be accompanied by the fee set forth in § 1.17(f) and include a showing to the satisfaction of the Director that the international design application is entitled to such filing date.

**§ 1.1024 The description.**

(a) An international design application designating the United States must include a specification as prescribed by 35 U.S.C. 112 and preferably include a brief description of the view or views of the reproduction.

(b) The description requirements set forth in Rule 11(2) may apply to designations of Contracting Parties other than the United States that require a description.

**§ 1.1025 The claim.**

The specific wording of the claim in an international design application designating the United States shall be in formal terms to the ornamental design for the article (specifying name of article) as shown, or as shown and described. More than one claim is neither required nor permitted for purposes of the United States.

**§ 1.1026 Reproductions.**

Reproductions shall comply with the requirements of Rule 9 and Part Four of the Administrative Instructions.

**§ 1.1027 Specimens.**

Where a request for deferment of publication has been filed in respect of a two-dimensional industrial design, the international design application may include specimens of the design in accordance with Rule 10 and Part Four of the Administrative Instructions. Neither a request for deferment of publication nor specimens are permitted in an international design application that designates the United States or any other Contracting Party which does not permit deferment of publication.

## Fees

**§ 1.1031 International design application fees.**

(a) International design applications filed through the Office as an office of indirect filing are subject to payment of a transmittal fee (35 U.S.C. 382(b) and Article 4(2)) in the amount of $130.

(b) The Schedule of Fees annexed to the Regulations (Rule 27(1)), a list of individual designation fee amounts, and a fee calculator may be viewed on the Web site of the World Intellectual Property Organization, available at: *http://www.wipo.int/hague.*

(c) The following fees required by the International Bureau may be paid either directly to the International Bureau or through the Office as an office of indirect filing in the amounts specified on the World Intellectual Property Organization Web site described in paragraph (b) of this section:

(1) International application fees (Rule 12(1)); and

(2) Fee for descriptions exceeding 100 words (Rule 11(2)).

(d) The fees referred to in paragraph (c) of this section may be paid as follows:

(1) Directly to the International Bureau in Swiss currency (*see* Administrative Instruction 801); or

(2) Through the Office as an office of indirect filing, provided such fees are paid no later than the date of payment of the transmittal fee required under paragraph (a) of this section. Any payment through the Office must be in U.S. dollars. Applicants paying the fees in paragraph (c) of this section through the Office may be subject to a requirement by the International Bureau to pay additional amounts where the conversion from U.S. dollars to Swiss currency results in the International Bureau receiving less than the prescribed amounts.

## Priority

**§ 1.1035 The priority claim in an international design application.**

(a) The international design application may claim under Article 4 of the Paris Convention, the priority of one or more earlier applications filed in or for any country party to that Convention or any Member of the World Trade Organization. The priority claim must contain an indication of the name of the Office where such filing was made and of the date and, where available, the number of that filing, and where the priority claim relates to less than all the industrial designs contained in the international design application, the indication of those industrial designs to which the priority claim relates or does not relate (Article 6 and Rule 7(5)(c)).

(b) An international design application designating the United States may claim benefit under 35 U.S.C. 120, 121, 365(c) or 386(c) to an earlier filed application in accordance with § 1.78.

## Representation

**§ 1.1041 Representation in an international design application.**

(a) The applicant or the holder may appoint a representative before the International Bureau in accordance with Rule 3.

(b) Applicants of international design applications may be represented before the Office as an office of indirect filing by a practitioner registered (§ 11.6) or granted limited recognition (§§ 11.9(a) or (b)) to practice before the Office in patent matters. Such practitioner may act pursuant to § 1.34 or be appointed, in writing signed by the applicant, giving the practitioner power to act on behalf of the applicant and specifying the name and registration number or limited recognition number of each practitioner. An appointment of a representative made in the international design application pursuant to Rule 3(2) that complies with the requirements of this paragraph will be effective as an appointment before the Office as an office of indirect filing.

## Transmittal of International Design Application to the International Bureau

**§ 1.1045 Procedures for transmittal of international design application to the International Bureau.**

(a) Subject to paragraph (b) of this section and payment of the transmittal fee set forth in § 1.1031(a), transmittal of the international design application to the International Bureau shall be made by the Office as provided by Rule 13(1). At the same time as it transmits the international design application to the International Bureau, the Office shall notify the International Bureau of the date on which it received the application. The Office shall also notify

the applicant of the date on which it received the application and of the transmittal of the international design application to the International Bureau.

(b) No copy of an international design application may be transmitted to the International Bureau, a foreign designated office, or other foreign authority by the Office or the applicant, unless the applicable requirements of part 5 of this chapter have been satisfied.

(c) Once transmittal of the international design application has been effected under paragraph (a) of this section, except for matters properly before the United States Patent and Trademark Office as an office of indirect filing or as a designated office, all further correspondence concerning the application should be sent directly to the International Bureau. The United States Patent and Trademark Office will generally not forward communications to the International Bureau received after transmittal of the application to the International Bureau. Any reply to an invitation sent to the applicant by the International Bureau must be filed directly with the International Bureau, and not with the Office, to avoid abandonment or other loss of rights under Article 8.

**Relief From Prescribed Time Limits; Conversion to a Design Application Under 35 U.S.C. Chapter 16**

**§ 1.1051 Relief from prescribed time limits.**

(a) If the delay in an applicant's failure to act within prescribed time limits under the Hague Agreement in connection with requirements pertaining to an international design application was unintentional, a petition may be filed pursuant to this section to excuse the failure to act as to the United States. A grantable petition pursuant to this section must be accompanied by:

(1) A copy of any invitation sent from the International Bureau setting a prescribed time limit for which applicant failed to timely act;

(2) The reply required under paragraph (c) of this section, unless previously filed;

(3) The fee as set forth in § 1.17(u);

(4) A certified copy of the originally filed international design application, unless a copy of the international design application was previously communicated to the Office from the International Bureau or the international design application was filed with the Office as an office of indirect filing, and a translation thereof into the English language if it was filed in another language; and

(5) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(b) Any request for reconsideration or review of a decision refusing to excuse the applicant's failure to act within prescribed time limits in connection with requirements pertaining to an international design application upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to excuse or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under the provisions of § 1.136.

(c) *Reply.* The reply required may be:

(1) The filing of a continuing application. If the international design application has not been subject to international registration, the reply must also include a grantable petition under § 1.1023(b) to accord the international design application a filing date; or

(2) A grantable petition under § 1.1052, where the international design application was filed with the Office as an office of indirect filing.

**§ 1.1052 Conversion to a design application under 35 U.S.C. chapter 16.**

(a) An international design application designating the United States filed with the Office as an office of indirect filing and meeting the requirements under § 1.53(b) for a filing date for an application for a design patent may, on petition under this section, be converted to an application for a design patent under § 1.53(b) and accorded a filing date as provided therein. A petition under this section must be accompanied by the fee set forth in § 1.17(v) and be filed prior to publication of the international registration under Article 10(3). The conversion of an international design application to an application for a design patent under § 1.53(b) will not entitle applicant to a refund of the transmittal fee or any fee forwarded to the International Bureau, or the application of any such fee toward the filing fee, or any other fee, for the application for a design patent under § 1.53(b). The application for a design patent resulting from conversion of an international design application must also include the basic filing fee (§ 1.16(b)), the search fee (§ 1.16(l)), the examination fee (§ 1.16(p)), the inventor's oath or declaration (§§ 1.63 or 1.64), and a surcharge if required by § 1.16(f).

(b) An international design application will be treated as an application for a design patent under § 1.53(b) if a decision on petition under this section is granted prior to transmittal of the international design application to the International Bureau pursuant to § 1.1045. Otherwise, a decision granting a petition under this section will be effective to treat the international design application as an application for a design patent under § 1.53(b) only for purposes of the United States.

(c) A petition under this section will not be granted in an abandoned international design application absent a grantable petition under § 1.1051.

**National Processing of International Design Applications**

**§ 1.1061 Rules applicable.**

(a) The rules relating to applications for patents for other inventions or discoveries are also applicable to international design applications designating the United States, except as otherwise provided in this chapter or required by the Articles or Regulations.

(b) The provisions of §§ 1.84 and 1.152–1.154 shall not apply to international design applications.

**§ 1.1062 Examination.**

(a) *Examination.* The Office shall make an examination pursuant to Title 35 of the United States Code of an international design application designating the United States. An international design application may not be refused on grounds that requirements relating to the form or contents of the international design application provided for in the Hague Agreement or the Regulations or additional to, or different from, those requirements have not been satisfied.

(b) *Timing.* For each international design application to be examined under paragraph (a) of this section, the Office shall, subject to Rule 18(1)(c)(ii), send to the International Bureau within 12 months from the publication of the international registration under Rule 26(3) a notification of refusal (§ 1.1063) where it appears that the applicant is not entitled to a patent under the law with respect to any industrial design that is the subject of the international registration.

**§ 1.1063 Notification of Refusal**

(a) A notification of refusal shall contain or indicate:

(1) The number of the international registration;

(2) The grounds on which the refusal is based;

(3) Where the grounds of refusal refer to similarity with an industrial design that is the subject of an earlier application or registration, a copy of a reproduction of the earlier industrial design and information concerning the earlier industrial design as required under Hague Rule 18(2)(b)(iv); and

(4) A time period for reply to the notification under § 1.134 and § 1.136 to avoid abandonment.

(b) Any reply to the notification of refusal must be filed directly with the Office and not through the International Bureau. The requirements of § 1.111 shall apply to a reply to a notification of refusal.

**§ 1.1064 One independent and distinct design.**

(a) Only one independent and distinct design may be claimed in an international design application designating the United States.

(b) If the requirements under paragraph (a) of this section are not satisfied, the examiner shall in the notification of refusal or other Office action require the applicant in the reply to that action to elect one independent and distinct design for which prosecution on the merits shall be restricted. Such requirement will normally be made before any action on the merits but may be made at any time before the final action. Review of any such requirement is provided under §§ 1.143 and 1.144.

**§ 1.1066 Correspondence address for an international design application.**

(a) Unless changed in accordance with paragraph (b) of this section, the Office will use as the correspondence address the address of applicant's representative identified in the publication of the international registration, or if there is no address for the representative, the address of the applicant identified therein.

(b) The correspondence address may be changed by the parties set forth in § 1.33(b)(1) or (b)(3) in accordance with § 1.33(a).

(c) Reference in the rules to the correspondence address set forth in § 1.33(a) shall be construed to include a reference to this section for a nonprovisional application that is an international design application.

**§ 1.1067 Title and inventor's oath or declaration.**

(a) The title of the design must designate the particular article. Where an international design application does not contain a title of the design, the Office may establish a title.

(b) An international design application designating the United States must include the inventor's oath or declaration. *See* § 1.1021(d). If the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment. This time period is not extendable under § 1.136 (*see* § 1.136(c)).

**§ 1.1069 Notification of Division.**

(a) Where, following a notification of refusal in an international design application requiring an election of an independent and distinct design under § 1.1064(b), a divisional application claiming benefit under 35 U.S.C. 386(c) and 121 to the international design application is filed for the non-elected design(s), the Office shall notify the International Bureau. The notification to the International Bureau shall indicate:

(1) The number of the international registration concerned;

(2) The numbers of the industrial designs which have been the subject of the divisional application(s); and

(3) The divisional application number(s).

(b) The Office may require the applicant in a divisional application that is subject to a notification under paragraph (a) of this section to identify the design in the international design application pursued in the divisional application.

**§ 1.1070 Notification of Invalidation.**

(a) Where a design patent that was granted from an international design application is invalidated in the United States, and the invalidation is no longer subject to any review or appeal, the patentee shall inform the Office.

(b) After receiving a notification of invalidation under paragraph (a) of this section or through other means, the Office will notify the International Bureau in accordance with Hague Rule 20.

## PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

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

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

■ 31. Section 3.1 is amended by revising the definition of ''Application'' to read as follows:

**§ 3.1 Definitions.**

* * * * *

*Application* means a national application for patent, an international patent application that designates the United States of America, an international design application that designates the United States of America, or an application to register a trademark under section 1 or 44 of the Trademark Act, 15 U.S.C. 1051 or 15 U.S.C. 1126, unless otherwise indicated.

* * * * *

■ 32. Section 3.21 is revised to read as follows:

**§ 3.21 Identification of patents and patent applications.**

An assignment relating to a patent must identify the patent by the patent number. An assignment relating to a national patent application must identify the national patent application by the application number (consisting of the series code and the serial number; *e.g.,* 07/123,456). An assignment relating to an international patent application which designates the United States of America must identify the international application by the international application number; *e.g.,* PCT/US2012/012345. An assignment relating to an international design application which designates the United States of America must identify the international design application by the international registration number or by the U.S. application number assigned to the international design application. If an assignment of a patent application filed under § 1.53(b) is executed concurrently with, or subsequent to, the execution of the patent application, but before the patent application is filed, it must identify the patent application by the name of each inventor and the title of the invention so that there can be no mistake as to the patent application intended. If an assignment of a provisional application under § 1.53(c) is executed before the provisional application is filed, it must identify the provisional application by the name of each inventor and the title of the invention so that there can be no mistake as to the provisional application intended.

## PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

■ 33. The authority citation for 37 CFR part 5 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.;* the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.;* the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.;* and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

■ 34. Section 5.1 is amended by revising paragraph (b) to read as follows:

**§ 5.1 Applications and correspondence involving national security.**

* * * * *

(b) *Definitions.* (1) Application as used in this part includes provisional applications (§ 1.9(a)(2) of this chapter), nonprovisional applications (§ 1.9(a)(3)), international applications (§ 1.9(b)), or international design applications (§ 1.9(n)).

(2) Foreign application as used in this part includes, for filing in a foreign country, foreign patent agency, or international agency (other than the United States Patent Trademark Office) any of the following: An application for patent, international application, international design application, or application for the registration of a utility model, industrial design, or model.

* * * * *

■ 35. Section 5.3 is amended by revising paragraph (d) to read as follows:

**§ 5.3 Prosecution of application under secrecy orders; withholding patent.**

* * * * *

(d) International applications and international design applications under secrecy order will not be mailed, delivered, or otherwise transmitted to the international authorities or the applicant. International applications under secrecy order will be processed up to the point where, if it were not for the secrecy order, record and search copies would be transmitted to the international authorities or the applicant.

■ 36. Section 5.11 is amended by revising the heading and paragraphs (a) through (c), (e)(3)(i), and (f) to read as follows:

**§ 5.11 License for filing in, or exporting to, a foreign country an application on an invention made in the United States.**

(a) A license from the Commissioner for Patents under 35 U.S.C. 184 is required before filing any application for patent including any modifications, amendments, or supplements thereto or divisions thereof or for the registration of a utility model, industrial design, or model, in a foreign patent office or any foreign patent agency or any international agency other than the United States Receiving Office or the United States Patent and Trademark Office as an office of indirect filing for international design applications, if the invention was made in the United States, and:

(1) An application on the invention has been filed in the United States less than six months prior to the date on which the application is to be filed, or

(2) No application on the invention has been filed in the United States.

(b) The license from the Commissioner for Patents referred to in paragraph (a) would also authorize the export of technical data abroad for purposes relating to the preparation, filing or possible filing and prosecution of a foreign application without separately complying with the regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730–774 (Export Administration Regulations of the Bureau of Industry and Security, Department of Commerce) and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy).

(c) Where technical data in the form of a patent application, or in any form, are being exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign application, without the license from the Commissioner for Patents referred to in paragraphs (a) or (b) of this section, or on an invention not made in the United States, the export regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730–774 (Export Administration Regulations of the Bureau of Industry and Security, Department of Commerce) and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy) must be complied with unless a license is not required because a United States application was on file at the time of export for at least six months without a secrecy order under § 5.2 being placed thereon. The term ''exported'' means export as it is defined in 22 CFR part 120, 15 CFR part 734 and activities covered by 10 CFR part 810.

* * * * *

(e) * * *

(3) * * *

(i) A license is not, or was not, required under paragraph (e)(2) of this section for the foreign application;

* * * * *

(f) A license pursuant to paragraph (a) of this section can be revoked at any time upon written notification by the Patent and Trademark Office. An authorization to file a foreign application resulting from the passage of six months from the date of filing of a United States patent application may be revoked by the imposition of a secrecy order.

■ 37. Section 5.12 is amended by revising paragraph (a) to read as follows:

**§ 5.12 Petition for license.**

(a) Filing of an application on an invention made in the United States will be considered to include a petition for license under 35 U.S.C. 184 for the subject matter of the application. The filing receipt or other official notice will indicate if a license is granted. If the initial automatic petition is not granted, a subsequent petition may be filed under paragraph (b) of this section.

* * * * *

■ 38. Section 5.13 is revised to read as follows:

**§ 5.13 Petition for license; no corresponding application.**

If no corresponding national, international design, or international application has been filed in the United States, the petition for license under § 5.12(b) must also be accompanied by a legible copy of the material upon which a license is desired. This copy will be retained as a measure of the license granted.

■ 39. Section 5.14 is amended by revising paragraph (c) to read as follows:

**§ 5.14 Petition for license; corresponding U.S. application.**

* * * * *

(c) Where the application to be filed or exported abroad contains matter not disclosed in the United States application or applications, including the case where the combining of two or more United States applications introduces subject matter not disclosed in any of them, a copy of the application as it is to be filed or exported abroad, must be furnished with the petition. If, however, all new matter in the application to be filed or exported is readily identifiable, the new matter may be submitted in detail and the remainder by reference to the pertinent United States application or applications.

■ 40. Section 5.15 is amended by revising paragraphs (a), (b), (d) and (e) to read as follows:

**§ 5.15 Scope of license.**

(a) Applications or other materials reviewed pursuant to §§ 5.12 through

5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181, will be eligible for a license of the scope provided in this paragraph. This license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign application, if such changes to the application do not alter the general nature of the invention in a manner that would require the United States application to have been made available for inspection under 35 U.S.C. 181. Grant of this license authorizes the export and filing of an application in a foreign country or to any foreign patent agency or international patent agency when the subject matter of the foreign application corresponds to that of the domestic application. This license includes authority:

(1) To export and file all duplicate and formal application papers in foreign countries or with international agencies;

(2) To make amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application; and

(3) To take any action in the prosecution of the foreign application provided that the adding of subject matter or taking of any action under paragraphs (a)(1) or (2) of this section does not change the general nature of the invention disclosed in the application in a manner that would require such application to have been made available for inspection under 35 U.S.C. 181 by including technical data pertaining to:

(i) Defense services or articles designated in the United States Munitions List applicable at the time of foreign filing, the unlicensed exportation of which is prohibited pursuant to the Arms Export Control Act, as amended, and 22 CFR parts 121 through 130; or

(ii) Restricted Data, sensitive nuclear technology or technology useful in the production or utilization of special nuclear material or atomic energy, dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the regulations for Unclassified Activities in Foreign Atomic Energy Programs, 10 CFR part 810, in effect at the time of foreign filing.

(b) Applications or other materials which were required to be made available for inspection under 35 U.S.C. 181 will be eligible for a license of the scope provided in this paragraph. Grant of this license authorizes the export and filing of an application in a foreign country or to any foreign patent agency or international patent agency. Further, this license includes authority to export and file all duplicate and formal papers in foreign countries or with foreign and international patent agencies and to make amendments, modifications, and supplements to, file divisions of, and take any action in the prosecution of the foreign application, provided subject matter additional to that covered by the license is not involved.

* * * * *

(d) In those cases in which no license is required to file or export the foreign application, no license is required to file papers in connection with the prosecution of the foreign application not involving the disclosure of additional subject matter.

(e) Any paper filed abroad or transmitted to an international patent agency following the filing of a foreign application that changes the general nature of the subject matter disclosed at the time of filing in a manner that would require such application to have been made available for inspection under 35 U.S.C. 181 or that involves the disclosure of subject matter listed in paragraphs (a)(3)(i) or (ii) of this section must be separately licensed in the same manner as a foreign application. Further, if no license has been granted under § 5.12(a) on filing the corresponding United States application, any paper filed abroad or with an international patent agency that involves the disclosure of additional subject matter must be licensed in the same manner as a foreign application.

* * * * *

## PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 41. The authority citation for 37 CFR part 11 continues to read as follows:

**Authority:** 5 U.S.C. 500, 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 32, 41.

■ 42. Section 11.10 is amended by revising paragraph (b)(3)(iii) to read as follows:

### § 11.10 Restrictions on practice in patent matters.

* * * * *

(b) * * *

(3) * * *

(iii) Particular patent or patent application means any patent or patent application, including, but not limited to, a provisional, substitute, international, international design, continuation, divisional, continuation-in-part, or reissue patent application, as well as any protest, reexamination, petition, appeal, or interference based on the patent or patent application.

* * * * *

Dated: November 20, 2013.

**Teresa Stanek Rea,**

*Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.*

[FR Doc. 2013–28262 Filed 11–27–13; 8:45 am]

BILLING CODE P

# FEDERAL REGISTER

Vol. 78 Friday,

No. 230 November 29, 2013


Part VI

## Environmental Protection Agency

40 CFR Part 98

2013 Revisions to the Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 98**

**[EPA–HQ–OAR–2012–0934; FRL–9902–95–OAR ]**

**RIN 2060–AR52**

## 2013 Revisions to the Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is amending the Greenhouse Gas Reporting Rule to implement technical corrections, clarifying revisions, and other amendments to improve the quality and consistency of the data collected by the EPA. Among other changes, the EPA is amending the Rule's table of global warming potentials to revise the values for certain greenhouse gases. This action also establishes confidentiality determinations for the reporting of new or substantially revised data elements (i.e., requiring additional or different data to be reported) contained in these final amendments to the Greenhouse Gas Reporting Rule.

**DATES:** This final rule is effective on January 1, 2014.

**ADDRESSES:** All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, William Jefferson Clinton Building (WJC) West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER GENERAL INFORMATION CONTACT:** Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov.* For technical information, please go to the Greenhouse Gas Reporting Rule Program Web site *http://www.epa.gov/ghgreporting/index.html.* To submit a question, select Rule Help Center, followed by Contact Us.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this final rule will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/ghgreporting/index.html.*

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine''). These are amendments to existing regulations and affect certain owners and operators of facilities that directly emit greenhouse gases (GHGs) as well as certain suppliers. Regulated categories and examples of affected entities include those listed in Table 1 of this preamble.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

| Category | NAICS | Examples of affected facilities |
|---|---|---|
| General Stationary Fuel Combustion Sources | ..... | Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines. |
| | 211 | Extractors of crude petroleum and natural gas. |
| | 321 | Manufacturers of lumber and wood products. |
| | 322 | Pulp and paper mills. |
| | 325 | Chemical manufacturers. |
| | 324 | Petroleum refineries, and manufacturers of coal products. |
| | 316, 326, 339 | Manufacturers of rubber and miscellaneous plastic products. |
| | 331 | Steel works, blast furnaces. |
| | 332 | Electroplating, plating, polishing, anodizing, and coloring. |
| | 336 | Manufacturers of motor vehicle parts and accessories. |
| | 221 | Electric, gas, and sanitary services. |
| | 622 | Health services. |
| | 611 | Educational services. |
| Electricity Generation | 221112 | Fossil-fuel fired electric generating units, including units owned by federal and municipal governments and units located in Indian Country. |
| Acid Gas Injection Projects | 211111 or 211112 | Projects that inject natural gas containing $CO_2$ underground. |
| Adipic Acid Production | 325199 | Adipic acid manufacturing facilities. |
| Aluminum Production | 331312 | Primary Aluminum production facilities. |
| Ammonia Manufacturing | 325311 | Anhydrous and aqueous ammonia manufacturing facilities. |
| Cement Production | 327310 | Portland cement manufacturing plants. |
| $CO_2$ Enhanced Oil and Gas Recovery Projects | 211 | Oil and gas extraction projects using $CO_2$ enhanced oil and gas recovery. |
| Electrical Equipment Use | 221121 | Electric bulk power transmission and control facilities. |
| Electrical Equipment Manufacture or Refurbishment. | 33531 | Power transmission and distribution switchgear and specialty transformers manufacturing facilities. |
| Electronics Manufacturing | 334111 | Microcomputers manufacturing facilities. |
| | 334413 | Semiconductor, photovoltaic (solid-state) device manufacturing facilities. |
| | 334419 | LCD unit screens manufacturing facilities. MEMS manufacturing facilities. |
| Ethanol Production | 325193 | Ethyl alcohol manufacturing facilities. |
| Ferroalloy Production | 331112 | Ferroalloys manufacturing facilities. |
| Fluorinated GHG Production | 325120 | Industrial gases manufacturing facilities. |
| Food Processing | 311611 | Meat processing facilities. |

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

| Category | NAICS | Examples of affected facilities |
|---|---|---|
| | 311411 | Frozen fruit, juice, and vegetable manufacturing facilities. |
| | 311421 | Fruit and vegetable canning facilities. |
| Glass Production | 327211 | Flat glass manufacturing facilities. |
| | 327213 | Glass container manufacturing facilities. |
| | 327212 | Other pressed and blown glass and glassware manufacturing facilities. |
| GS Sites | NA | $CO_2$ geologic sequestration projects. |
| HFC–22 Production and HFC–23 Destruction | 325120 | Chlorodifluoromethane manufacturing facilities. |
| Hydrogen Production | 325120 | Hydrogen manufacturing facilities. |
| Importers and Exporters of Pre-charged Equipment and Closed-Cell Foams. | 423730 | Air-conditioning equipment (except room units) merchant wholesalers. |
| | 333415 | Air-conditioning equipment (except motor vehicle) manufacturing. |
| | 423620 | Air-conditioners, room, merchant wholesalers. |
| | 443111 | Household Appliance Stores. |
| | 326150 | Polyurethane foam products manufacturing. |
| | 335313 | Circuit breakers, power, manufacturing. |
| | 423610 | Circuit breakers merchant wholesalers. |
| Industrial Waste Landfills | 562212 | Solid waste landfills. |
| | 221320 | Sewage treatment facilities. |
| | 322110 | Pulp mills. |
| | 322121 | Paper mills. |
| | 322122 | Newsprint mills. |
| | 322130 | Paperboard mills. |
| | 311611 | Meat processing facilities. |
| | 311411 | Frozen fruit, juice and vegetable manufacturing facilities. |
| | 311421 | Fruit and vegetable canning facilities. |
| Industrial Wastewater Treatment | 322110 | Pulp mills. |
| | 322121 | Paper mills. |
| | 322122 | Newsprint mills. |
| | 322130 | Paperboard mills. |
| | 311611 | Meat processing facilities. |
| | 311411 | Frozen fruit, juice, and vegetable manufacturing facilities. |
| | 311421 | Fruit and vegetable canning facilities. |
| | 325193 | Ethanol manufacturing facilities. |
| | 324110 | Petroleum refineries. |
| Iron and Steel Production | 331111 | Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace shops. |
| Lead Production | 331419 | Primary lead smelting and refining facilities. |
| | 331492 | Secondary lead smelting and refining facilities. |
| Lime Production | 327410 | Calcium oxide, calcium hydroxide, dolomitic hydrates manufacturing facilities. |
| Magnesium Production | 331419 | Primary refiners of nonferrous metals by electrolytic methods. |
| Municipal Solid Waste Landfills | 562212 | Solid waste landfills. |
| | 221320 | Sewage treatment facilities. |
| Nitric Acid Production | 325311 | Nitric acid manufacturing facilities. |
| Petrochemical Production | 32511 | Ethylene dichloride manufacturing facilities. |
| | 325199 | Acrylonitrile, ethylene oxide, methanol manufacturing facilities. |
| | 325110 | Ethylene manufacturing facilities. |
| | 325182 | Carbon black manufacturing facilities. |
| Petroleum Refineries | 324110 | Petroleum refineries. |
| Petroleum and Natural Gas Systems | 486210 | Pipeline transportation of natural gas. |
| | 221210 | Natural gas distribution facilities. |
| | 211 | Extractors of crude petroleum and natural gas. |
| | 211112 | Natural gas liquid extraction facilities. |
| Phosphoric Acid Production | 325312 | Phosphoric acid manufacturing facilities. |
| Pulp and Paper Manufacturing | 322110 | Pulp mills. |
| | 322121 | Paper mills. |
| | 322130 | Paperboard mills. |
| Soda Ash Manufacturing | 325181 | Alkalies and chlorine manufacturing facilities. |
| Silicon Carbide Production | 327910 | Silicon carbide abrasives manufacturing facilities. |
| Sulfur Hexafluoride ($SF_6$) from Electrical Equipment. | 221121 | Electric bulk power transmission and control facilities. |
| Titanium Dioxide Production | 325188 | Titanium dioxide manufacturing facilities. |
| Underground Coal Mines | 212113 | Underground anthracite coal mining operations. |
| | 212112 | Underground bituminous coal mining operations. |
| Zinc Production | 331419 | Primary zinc refining facilities. |
| | 331492 | Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals. |
| Suppliers of Industrial Greenhouse Gases | 325120 | Industrial gas manufacturing facilities. |
| Suppliers of Petroleum Products | 324110 | Petroleum refineries. |
| Suppliers of Natural Gas and Natural Gas Liquids. | 221210 | Natural gas distribution facilities. |
| | 211112 | Natural gas liquid extraction facilities. |
| Suppliers of Carbon Dioxide ($CO_2$) | 325120 | Industrial gas manufacturing facilities. |

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Types of facilities different from those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in the sections related to suppliers and direct emitters of GHGs. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** Section.

*What is the effective date?* The final rule is effective on January 1, 2014. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the purposes underlying APA section 553(d) in making this rule effective on January 1, 2014. Section 5 U.S.C. 553(d)(3) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As explained below, EPA finds that there is good cause for this rule to become effective on January 1, 2014, even though this may result in an effective date fewer than 30 days from date of publication in the **Federal Register**.

While this action is being signed prior to December 1, 2013, there is likely to be a significant delay in the publication of this rule as it contains complex equations and tables and is relatively long. As an example, then-Acting Administrator Bob Perciasepe signed the proposed 2013 Revisions Rule on March 8, 2013, but the proposed rule was not published in the **Federal Register** until April 2, 2013. Further, we anticipate that the partial federal government shutdown from October 1 to October 16, 2013, may have caused a backlog in the **Federal Register** publication process that may cause additional delays. The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect.

To employ the 5 U.S.C. 553(d)(3) ''good cause'' exemption, an agency must ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' [1] Where, as here, the final rule will be signed and made available on the EPA Web site more than 30 days before the effective date, but where the publication is likely to be delayed due to the complexity and length of the rule, the regulated entities are afforded this reasonable amount of time. This is particularly true given that most of the revisions being made in this package provide flexibilities to sources covered by the reporting rule or require no additional action by affected sources. Those amendments that increase burden affect a very small number of new facilities and include flexibility provisions such as Best Available Monitoring Methods. We balance these circumstances with the need for the amendments to be effective by January 1, 2014; a delayed effective day would result in regulatory uncertainty, program disruption, and an inability to have the amendments (many of which clarify requirements, relieve burden, and/or are made at the request of the regulated facilities) effective for the 2014 reporting year. Accordingly, we find good cause exists to make this rule effective on January 1, 2014, consistent with the purposes of 5 U.S.C. 553(d)(3).

*Judicial Review.* Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by January 28, 2014. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note that under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

*Acronyms and Abbreviations.* The following acronyms and abbreviations are used in this document.

APA Administrative Procedure Act
AR4 Fourth Assessment Report
ASTM American Society for Testing and Materials
BACT Best available control technology
BAMM best available monitoring methods
CAA Clean Air Act
CAMD Clean Air Markets Division
CBI confidential business information
CEMS continuous emissions monitoring system
CFR Code of Federal Regulations
$CH_4$ methane
$CO_2$ carbon dioxide
$CO_2e$ carbon dioxide equivalent
DOC degradable organic carbon
DOE Department of Energy
EAF electric arc furnace
e-GGRT Electronic Greenhouse Gas Reporting Tool
EIA Energy Information Administration
EPA U.S. Environmental Protection Agency
FBC fluidized bed combustor
FLIGHT Facility Level Information on Green House Gases Tool
FR Federal Register
F–GHG fluorinated greenhouse gas
F–HTF fluorinated heat transfer fluid
GHG greenhouse gas
GHGRP Greenhouse Gas Reporting Program
GWP global warming potential
HFC hydrofluorocarbon
Hg mercury
HHV high heat value
HQ Headquarters
ICR Information Collection Request
IPCC Intergovernmental Panel on Climate Change
ISBN International Standard Book Number
LDC Local Distribution Company
LPG liquid petroleum gases
Mscf thousand standard cubic feet
MSHA Mine Safety and Health Administration
MSW municipal solid waste
$N_2O$ nitrous oxide
NAICS North American Industry Classification System
NASA National Aeronautics and Space Administration

[1] *Omnipoint Corp.* v. *FCC,* 78 F3d 620, 630 (D.C. Cir. 1996), quoting *U.S.* v. *Gavrilovic,* 551 F.2d 1099, 1105 (8th Cir. 1977).

NGL natural gas liquid
NSPS New Source Review Performance Standards
NTTAA National Technology Transfer and Advancement Act of 1995
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
ORIS Office of the Regulatory Information System
PAL plant-wide applicability limits
PFC perfluorocarbon
PSD prevention of significant deterioration
PTE potential to emit
QA/QC quality assurance/quality control
R&D Research and Development
RFA Regulatory Flexibility Act
SAR Second Assessment Report
$SF_6$ sulfur hexafluoride
SIP State implementation plan
TAR Third Assessment Report
TPY tons per year
UNFCCC United Nations Framework Convention on Climate Change
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
XML extensible markup language

*Organization of This Document.* The following outline is provided to aid in locating information in this preamble.

I. Background
A. How is this preamble organized?
B. Background on the Action
C. Legal Authority
D. What GWP values are addressed in this notice?
II. Overview of Final Corrections and Other Amendments and Responses to Public Comment
A. Subpart A—General Provisions
a. Summary of Comments and Responses on the Revision of the GHGRP to Complement the Inventory and the Use of IPCC AR4 GWPs
B. Subpart C—General Stationary Fuel Combustion Sources
C. Subpart H—Cement Production
D. Subpart K—Ferroalloy Production
E. Subpart L—Fluorinated Gas Production
F. Subpart N—Glass Production
G. Subpart O—HFC-22 Production and HFC-23 Destruction
H. Subpart P—Hydrogen Production
I. Subpart Q—Iron and Steel Production
J. Subpart W—Petroleum and Natural Gas Systems
K. Subpart X—Petrochemical Production
L. Subpart Y—Petroleum Refineries
M. Subpart Z—Phosphoric Acid Production
N. Subpart AA—Pulp and Paper Manufacturing
O. Subpart BB—Silicon Carbide Production
P. Subpart DD—Electrical Transmission and Distribution Equipment Use
Q. Subpart FF—Underground Coal Mines
R. Subpart HH—Municipal Solid Waste Landfills
S. Subpart LL—Suppliers of Coal-Based Liquid Fuels
T. Subpart MM—Suppliers of Petroleum Products
U. Subpart NN—Suppliers of Natural Gas and Natural Gas Liquids
V. Subpart PP—Suppliers of Carbon Dioxide
W. Subpart QQ—Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams
X. Subpart RR—Geologic Sequestration of Carbon Dioxide
Y. Subpart SS—Electrical Equipment Manufacture or Refurbishment
Z. Subpart TT—Industrial Waste Landfills
AA. Subpart UU—Injection of Carbon Dioxide
BB. Other Technical Corrections
CC. Subpart I Correction
III. Schedule for the Final Amendments and Republication of Emission Estimates for Prior Year Reports
A. Schedule for Final Amendments and Significant Comments
B. Republication of Emissions Estimates for Prior Year Reports and Significant Comments
IV. Confidentiality Determinations
A. Final Confidentiality Determinations for New and Revised Data Elements
B. Public Comments on the Proposed Confidentiality Determinations and Responses to Public Comment
V. Impacts of the Final Rule
A. Impacts of the Final Amendments Due to Revised Global Warming Potentials
B. What are the impacts of the other amendments and revisions in this final rule?
C. Summary of Comments and Responses Regarding Impacts
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

## I. Background

### *A. How is this preamble organized?*

The first section of this preamble provides background information regarding the origin of the final amendments. This section also discusses the EPA's legal authority under the Clean Air Act to promulgate and amend the Greenhouse Gas Reporting Rule (40 CFR part 98, hereinafter referred to as ''Part 98''). Section II of this preamble contains information on the final revisions to Part 98 and is organized by Part 98 subpart. It also describes the major changes made to each source category since proposal and provides a brief summary of significant public comments and the EPA's responses on issues specific to each source category. Section III of this preamble discusses the effective date of the revisions for new and existing reporters and the EPA's intent to publish a version of the Greenhouse Gas Reporting Program (GHGRP) data for the reporting years 2010, 2011, and 2012 to reflect a consistent time-series. Section IV of this preamble discusses the confidentiality determinations for new or substantially revised (i.e., requiring additional or different data to be reported) data reporting elements. Section V of this preamble discusses the impacts of the final amendments, including the impact of revised global warming potentials (GWPs) on new and existing reporters. Finally, Section VI of this preamble describes the statutory and executive order requirements applicable to this action.

### *B. Background on the Action*

Part 98 was initially published in the **Federal Register** on October 30, 2009 (74 FR 56260). Part 98 became effective on December 29, 2009, and requires reporting of GHGs from certain facilities and suppliers. Subsequent notices were published in 2010 promulgating the requirements for subparts T, FF, II, and TT (75 FR 39736, July 12, 2010); subparts I, L, DD, QQ, and SS (75 FR 74774, December 1, 2010); and subparts RR and UU (75 FR 75060, December 1, 2010). A number of subparts have been revised since promulgation (75 FR 79092, December 17, 2010; 76 FR 73866, November 29, 2011;77 FR 10373, February 22, 2012; 77 FR 51477, August 24, 2012; and subpart I, signed by the Administrator on August 16, 2013).

On April 2, 2013, the EPA proposed amendments to provisions in Part 98 in the ''2013 Revisions to the Greenhouse Gas Reporting Rule and Proposed Confidentiality Determinations for New or Substantially Revised Data Elements'' (hereinafter ''2013 Revisions proposal'') (77 FR 19802). The EPA is finalizing those amendments in this action, with certain changes following consideration of comments submitted. Responses to significant comments submitted on the proposed amendments can be found in Section II of this preamble.

### *C. Legal Authority*

The EPA is finalizing these rule amendments under its existing CAA

authority provided in CAA section 114. As stated in the preamble to the 2009 final GHG reporting rule (74 FR 56260, October 30, 2009), CAA section 114(a)(1) provides the EPA broad authority to require the information required to be gathered by this rule because such data inform and are relevant to the EPA's carrying out a wide variety of CAA provisions. See the preambles to the proposed (74 FR 16448, April 10, 2009) and final Part 98 (74 FR 56260) for further information.

In addition, the EPA is finalizing confidentiality determinations for certain new or substantially revised data elements required under the proposed GHG Reporting Rule under its authorities provided in sections 114, 301 and 307 of the CAA. As mentioned above, CAA section 114 provides the EPA authority to collect the information in Part 98. Section 114(c) requires that EPA make publicly available information obtained under section 114 except for information (excluding emission data) that qualifies for confidential treatment. The Administrator has determined that this final rule is subject to the provisions of section 307(d) of the CAA.

*D. What GWP values are addressed in this notice?*

In the 2013 Revisions proposal, the EPA proposed to amend Table A–1 to Subpart A, General Provisions, Part 98 (hereinafter referred to as ''Table A–1'') to revise the GWP values for certain GHGs that have been included in the Intergovernmental Panel for Climate Change (IPCC) Fourth Assessment Report (hereinafter referred to as ''IPCC AR4'' or ''AR4'') [2] and to add GWPs for 26 additional fluorinated GHGs that are not currently included in the table. The GWPs in Table A–1 are used to convert the emissions and supply data for each greenhouse gas into carbon dioxide equivalents ($CO_2e$).

As part of this action, the EPA is finalizing amendments to Table A–1 to revise the GWPs of certain GHGs that are already listed in the table to incorporate GWPs from the IPCC AR4. The EPA is finalizing these changes for two reasons. First, the revisions improve the quality of reported emissions and supply by reflecting improved scientific understanding of direct and indirect radiative forcing and atmospheric lifetimes of certain GHGs. Second, for these GHGs, the revisions ensure comparability of data collected in the GHGRP to the Inventory of U.S. Greenhouse Gas Emissions and Sinks (hereinafter referred to as ''Inventory'') that the EPA compiles annually to meet international commitments and to GHG inventories prepared by other countries.

After carefully considering comments received, the EPA is not finalizing in this rulemaking the GWPs for the 26 additional fluorinated GHGs not included in the IPCC AR4 that we proposed in the 2013 Revisions proposal. Based on comments that EPA should not include compounds that are not included in an IPCC study or peer-reviewed, as well as comments on permitting applicability, the EPA is reevaluating its approach to assigning GWPs for compounds not included in the IPCC AR4 and may address these compounds in a separate future action.

## II. Overview of Final Corrections and Other Amendments and Responses to Public Comment

The EPA is finalizing technical corrections, clarifying revisions, and other amendments to Part 98 to improve the quality and consistency of the data collected by the EPA. Many of the changes proposed were in response to feedback received from stakeholders during program implementation. Sections II.A through II.AA of this preamble describe the more substantive corrections, clarifying, and other amendments that we are finalizing for each subpart, including changes that affect the applicability of a subpart, changes that affect the applicability of a calculation method to a specific source at a facility, changes or corrections to calculation methods that substantially revise the calculation method or output of the equation, revisions to data reporting requirements that substantively clarify the reported data element or introduce a new data element, clarifications of general monitoring and quality assurance requirements, and changes to add new definitions. We have summarized the amendments to each subpart in the memorandum, ''Final Table of 2013 Revisions to the Greenhouse Gas Reporting Rule'' (hereinafter referred to as the ''Table of 2013 Revisions'') available in the docket for this rulemaking (EPA–HQ–OAR–2012–0934). The Table of 2013 Revisions describes each final change within a subpart and includes many minor revisions that were proposed but are not discussed in detail in this preamble (e.g., straightforward clarifications of requirements to better reflect the EPA's intent, simple corrections to calculation terms or cross-references that do not affect the output of calculations, harmonizing changes within a subpart (such as changes to terminology), simple editorial and minor error corrections, or removal of redundant text). These minor revisions are not discussed in this preamble because they do not substantially change the applicability, calculation, monitoring, recordkeeping, or reporting requirements of Part 98. The Table of 2013 Revisions also provides the existing rule text, the finalized changes, and indications of which amendments are being finalized as proposed and which amendments differ from the changes proposed in the 2013 Revisions proposal.

The amendments described in this preamble are listed in this section by subpart. The amendments to each subpart are followed by a summary of the major comments on those amendments and the EPA's responses. Minor comments received on the proposed amendments and the EPA's responses are available in the docket to this rulemaking (EPA–HQ–OAR–2011–0934). Some of the comments received on the proposed amendments included commenter suggestions of additional revisions to Part 98 that were beyond the scope of the proposed rulemaking. These additional revisions are identified in Sections II.K, II.N, II.R, and II.BB of this preamble. Although we are not including the suggested revisions in this final rule, the EPA reserves its discretion to consider these comments in any future rulemaking.

A complete listing of all comments and the EPA's responses is located in the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934.

Additional rationale for these amendments is available in the preamble to the proposed rule (78 FR 19802).

*A. Subpart A—General Provisions*

1. Summary of Final Amendments to Subpart A—Global Warming Potentials

In this action, we are revising Table A–1 to subpart A of Part 98 by updating the GWP values of certain compounds. These changes affect facilities and suppliers under Part 98 reporting the following greenhouse gases: Methane ($CH_4$), nitrous oxide ($N_2O$), sulfur hexafluoride ($SF_6$), certain hydrofluorocarbons (HFCs), certain perfluorocarbons (PFCs), and certain other fluorinated greenhouse gases (F–GHGs).[3]

[2] IPCC Fourth Assessment Report (AR4), 2007. *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, 104 pp.

[3] *Fluorinated greenhouse gases,* as defined in 40 CFR 98.6, include sulfur hexafluoride, nitrogen trifluoride, and any fluorocarbon except for

As proposed, we are revising GWPs for GHGs already in Table A–1 to reflect more accurate GWPs from the IPCC AR4 to better characterize the climate impacts of individual GHGs and to ensure continued consistency with other U.S. climate programs, including the Inventory. The amendments to the GWPs in Table A–1 that we are finalizing in this notice are discussed in Section II.A.1 of this preamble. The EPA's response to comments received on the proposed revisions to Table A–1 are in Section II.A.2 of this preamble. The schedule for implementing these amendments is discussed in Section III.A of this preamble. Section III.B of this preamble clarifies that the EPA is not requiring the revision of reports previously submitted to reflect the revised GWPs in Table A–1 or other amendments in this final rulemaking. Prior year reports, using original GWPs, will remain publicly available. However, the EPA will also publish a version of the $CO_2e$ emissions and supply estimates for the reporting years 2010, 2011, and 2012 using the revised GWPs in Table A–1. This will allow the Agency and public to view and compare trends in GHG data, beginning with the first year of GHGRP reporting, using consistent GWPs and without placing any additional burden on reporters.

As discussed in the preamble to the 2013 Revisions proposal, the revisions to the GWPs in Table A–1 will change not only the amount of $CO_2e$ reported by existing reporters but also change the number of reporters subject to Part 98. Some facilities to which the rule did not previously apply will now meet the thresholds for reporting based on increases in calculated $CO_2e$. The EPA received specific comments regarding the expansion of applicability that could occur in certain sectors due to the revision of the GWP for methane and due to certain sector-specific applicability and reporting characteristics. For Municipal Solid Waste (MSW) Landfills, commenters raised a specific concern related to the applicability for certain closed landfills that would become subject to Part 98 due to the revised GWP for methane. To address this concern, the EPA is amending subpart HH, which covers MSW Landfills, as discussed in Section II.R of this preamble.

The EPA has also updated the impacts analysis to address comments received on the proposed rule regarding compliance costs and to incorporate data from the 2011 reporting year that became available following the publication of the proposed rule. The impacts of the final amendments for affected subparts, including the number of new reporters for each subpart, are discussed in Section V of this preamble.

*Summary of Final Amendments to Global Warming Potentials.* For compounds that are included in the IPCC AR4, the EPA is adopting the AR4 GWPs as proposed. This approach will increase the accuracy of the $CO_2e$ estimates reported and is in keeping with the Agency's intent to have the GHGRP complement data compiled for the annual Inventory and other EPA programs. Table 2 of this preamble lists the final GWP values for each GHG. As discussed in Section I.D of this preamble, the EPA may address compounds that are not included in AR4 in a separate action.

TABLE 2—GHGS WITH REVISED GWPS FOR TABLE A–1

| Name | CAS No.[4] | Global warming potential |
|---|---|---|
| Methane | 74–82–8 | 25 |
| Nitrous oxide | 10024–97–2 | 298 |
| HFC-23 | 75–46–7 | 14,800 |
| HFC-32 | 75–10–5 | 675 |
| HFC-41 | 593–53–3 | 92 |
| HFC-125 | 354–33–6 | 3,500 |
| HFC-134 | 359–35–3 | 1,100 |
| HFC-134a | 811–97–2 | 1,430 |
| HFC-143 | 430–66–0 | 353 |
| HFC-143a | 420–46–2 | 4,470 |
| HFC-152a | 75–37–6 | 124 |
| HFC-227ea | 431–89–0 | 3,220 |
| HFC-236fa | 690–39–1 | 9,810 |
| HFC-245ca | 679–86–7 | 693 |
| HFC-43–10mee | 138495–42–8 | 1,640 |
| Sulfur hexafluoride | 2551–62–4 | 22,800 |
| PFC-14 (Perfluoromethane) | 75–73–0 | 7,390 |
| PFC-116 (Perfluoroethane) | 76–16–4 | 12,200 |
| PFC-218 (Perfluoropropane) | 76–19–7 | 8,830 |
| PFC-3-1-10 (Perfluorobutane) | 355-25-9 | 8,860 |
| Perfluorocyclobutane | 115–25–3 | 10,300 |
| PFC-4-1-12 (Perfluoropentane) | 678–26–2 | 9,160 |
| PFC-5-1-14 (Perfluorohexane) | 355–42–0 | 9,300 |

We are not revising GWPs for the remaining compounds in Table A–1, which were promulgated in the original final Part 98 rulemaking. Because the remaining F–GHGs in Table A–1 were not addressed by the IPCC's Second Assessment Report (SAR) at the time that the original Part 98 was finalized, the EPA promulgated GWPs for these compounds from the IPCC AR4 in the October 30, 2009 final Part 98. The only exception was the GWP for sevoflurane, which was not available in the SAR or AR4; the EPA promulgated the GWP for sevoflurane based on a peer-reviewed study.

The EPA received multiple comments on the proposed revisions of the GWPs

controlled substances as defined at 40 CFR part 82, subpart A and substances with vapor pressures of less than 1 mm of Hg absolute at 25 degrees C.

[4] Each chemical substance has a universal, unique identifier maintained in the Chemical Abstracts Service (CAS) Registry and known as the substance's CAS Number. See *http://www.cas.org/content/chemical-substances.*

in Table A–1. In some cases, commenters disagreed with the need to update the GHGRP to match the values used in the Inventory or disagreed with the use of AR4 values. For example, we received multiple comments requesting that the EPA consider more recently published values, or wait until the publication of the IPCC Fifth Assessment Report (hereinafter referred to as ''AR5'') to amend the GWPs in Table A–1. As discussed in the preamble to the proposed rule, the EPA is adopting AR4 values for certain compounds currently in Table A–1 to increase the accuracy of the $CO_2e$ estimates collected under the GHGRP to better inform EPA policies. The AR4 GWPs will complement the reporting metrics used in other U.S. climate programs, including the Inventory that is submitted to the United Nations Framework Convention on Climate Change (UNFCCC).[5] The AR4 GWPs will also ensure the compatibility of Part 98 with the President's Climate Action Plan and the U.S. commitment to GHG emission reductions to the United Nations, both of which reiterate President Obama's 2009 pledge that the U.S. would reduce its GHG emissions by 17 percent below 2005 levels by 2020, which both the U.S. and United Nations will assess using AR4 GWPs.[6] We view AR5 values as unlikely to come into use by the UNFCCC or other widespread use for several years. For example, the IPCC finalized AR4 in 2007 but the UNFCCC has adopted these values for parties' Inventory submissions just starting in 2015. Therefore, for those compounds in Table A–1 for which a GWP is available in the AR4, we are adopting the AR4 values as proposed and are not adopting GWPs from AR5. See Section II.A.2.a of this preamble for the EPA's response to comments related to the adoption of AR4 GWPs.

We are not including GWPs from the World Meteorological Organization (WMO) *Scientific Assessment of Ozone Depletion: 2010* (Global Ozone Research and Monitoring Project-Report No. 52, 516 pp., Geneva, Switzerland, 2011) in this final rule. In the proposed rule, the EPA sought comment on whether GWPs for fluorinated ethers and alcohols from the WMO Scientific Assessment should be adopted in Table A–1. We did not receive any comments related to the WMO on this rulemaking; without any commenter support, we have decided not to adopt GWPs from that assessment at this time.

The subpart W calculations for annual mass of GHG emissions for gas pneumatic device venting and natural gas driven pneumatic pump venting in $CO_2e$ are calculated using a conversion factor that was developed using the methane GWP from Table A–1. In addition, subpart W total GHG emissions are calculated using an equation that references numeric GWPs, instead of directly referencing Table A–1. Because the GWP values that inform the methane calculations in these three equations reference the previous GWP value, each equation needs to be amended separately to account for the change in the numeric GWP value for methane in Table A–1. While the EPA proposed that the new GWP apply throughout all of Part 98, the EPA did not specifically propose amendments to the regulatory text referencing the numeric GWP in these three discrete equations. In addition to finalizing the GWP value for methane in Table A–1, we are also amending the methane conversion factor and methane GWP used in three subpart W equations to ensure the correct GWP value for methane in Table A–1 is used in these calculations. See Section II.J of this preamble for more information.

2. Summary of Comments and Responses—Global Warming Potentials

a. Summary of Comments and Responses on the Revision of the GHGRP To Complement the Inventory and the Use of IPCC AR4 GWPs

This section summarizes the significant comments and responses related to the revision of the GHGRP to incorporate AR4 GWP values in Table A–1 to complement the Inventory. See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses.

*Comment:* Four commenters expressed support for the EPA's proposal to revise the GHGRP to complement the Inventory. One commenter stated that the revision to the GWP of methane will enable the EPA to use the subpart W reported data to update the annual Inventory. They noted that the subpart W data will improve the accuracy of the Inventory's estimated methane emissions for the natural gas sector. Several commenters supported adoption of AR4 GWP values, because the IPCC is the international leader in assessing climate change and determining a scientifically based and standardized list of GHGs and associated GWPs. These commenters reiterated that the EPA's commitment to report emissions using IPCC methods is well articulated in the preamble to the proposed rule, which states that the EPA is proposing revisions to Table A–1 ''to ensure continued consistency with the Inventory as the Inventory begins to use GWPs from the IPCC Fourth Assessment Report'' (77 FR 19807).

Three commenters disagreed with EPA's proposal to incorporate AR4 GWP values. These commenters asserted that there is not a strong scientific basis for updating the GWPs in Table A–1 to subpart A of Part 98 to reflect the values adopted in the AR4. The commenters contended that the proposed GWPs are not necessarily improved or more technically precise than the values EPA has already adopted. The commenters noted that the IPCC AR4 discussed some of the uncertainties associated with the AR4 GWPs. They stated that the GWPs adopted by the IPCC are derived using certain simplifications that have been the subject of criticism and that shortcomings in scientific knowledge make objective assessment of GHG impacts difficult.

Some commenters suggested that the EPA wait to revise Table A–1 until after IPCC AR5 is released. These commenters contended that international reporting data are outdated (for instance, they stated that GWPs from the IPPC Second Assessment Report, which was finalized in 1995, are required to be used for inventory reporting until 2015, when values from AR4, which was finalized in 2007, will be substituted), and are concerned that AR5 would not be incorporated into inventory reporting until 2020 or later. They asserted that the EPA's logic in proposing to replace the GWP values in the SAR with those in the AR4 should apply equally to replacing the GWP values from the AR4 with those in the AR5 when they become available. They stated that U.S. national and state regulation must be based on the latest and most robust scientific consensus of climate science, including appropriate GWPs, and that the advance of U.S. science and regulatory policy should not be slowed by a non-identical international emission reporting process designed for other purposes.

Commenters also disputed the EPA's rationale of being bound by UNFCCC reporting guidelines to use AR4 GWPs

[5] Parties to the UNFCCC, including the U.S., have agreed to submit annual reports in 2015 and future years using GWP values from the IPCC AR4.

[6] The President's Climate Action Plan, Executive Office of the President, June 2013, p. 4, *http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf*; Jonathan Pershing, Clarification of the U.S. Economy-Wide Target, *http://unfccc.int/files/bodies/awg-lca/application/pdf/20120517_usa_0940.pdf*; and UNFCCC GE.11–70204, Subsidiary Body for Scientific and Technological Advice 34th Session, 6–16 June 2011, Compilation of economy-wide emission reduction targets to be implemented by Parties included in Annex I to the Convention, FCCC/SB/2011/INF.1/Rev.1, pp. 7–8, *http://unfccc.int/resource/docs/2011/sb/eng/inf01r01.pdf*.

starting in 2015 for purposes of annual reports of national GHG inventories to the UNFCCC. One commenter stated that not incorporating AR5 GWPs is unreasonable and will potentially compromise the integrity of the GHGRP and future regulatory efforts based thereon. While the commenter acknowledged the benefit in reporting national inventories from around the world on a consistent basis, they maintained that the published GHGRP data and the national GHG inventory are produced for different purposes and need not use the same GWP values. The commenter stated that the programs do not cover the same emissions or emission sources, noting, for example, that the GHGRP requires reporting of a wide variety of pollutants that are not required to be included in the national inventories reported to UNFCCC.

*Response:* As described in the preamble of the proposed GHG Reporting Rule (74 FR 16448, April 10, 2009), the GHGRP is intended to provide data to support EPA climate policy and to supplement and complement existing U.S. government programs related to climate policy and research, including the Inventory submitted to the UNFCCC. The GHGRP provides data to develop and inform the Inventory and other U.S. federal and state climate programs by advancing the understanding of emission processes and monitoring methodologies for particular source categories or sectors. For example, GHGRP data published through the EPA's Facility Level Information on Green House gases Tool (FLIGHT) may be used by state and local entities to better understand the contribution of emissions from specific regional industries, or by EPA regulatory programs to review emissions from certain facilities within an industry to inform policy decisions. The GHGRP also complements the Inventory and other U.S. programs by providing data from individual facilities and suppliers above certain thresholds. Collected facility, unit, and process-level GHG data from the GHGRP supplements national statistics and improves the emission estimates presented in the Inventory. During the development of Part 98, the EPA generally proposed and finalized estimation methodologies and reporting metrics that were based on recent scientific data and that were consistent with the international reporting standards under the UNFCCC and the Inventory.

The goal of Part 98 is to collect data of sufficient accuracy and quality to inform future climate policy development. In this final rule, the EPA is adopting the proposed AR4 values in Table A–1 to ensure more accurate $CO_2e$ emission and supply estimates are collected for the GHGRP. As noted in the preamble to the proposed amendments (78 FR 19808), the IPCC AR4 GWPs reflect advances in scientific knowledge on the radiative efficiencies and atmospheric lifetimes of carbon dioxide and certain greenhouse gases, taking into account the increase in modeled atmospheric $CO_2$ concentrations since the SAR was published. The GWP of a given gas is dependent on the radiative efficiency of that gas, the lifetime of that gas, and any indirect forcing effects of that gas, all relative to the same values for carbon dioxide. The IPCC Third Assessment Report (TAR) used updated values of these factors to provide more accurate GWPs than did the IPCC SAR, and similarly the IPCC Fourth Assessment Report (AR4) was an improvement over the TAR. The TAR stated that GWP updates were made for those chemicals ''where significantly different new laboratory or radiative transfer results have been published.'' [7] In addition, the TAR notes that the radiative efficiency of several gases, including $CO_2$, depend on the background concentration. As the background concentration rises, the radiative efficiency of an additional increment of that gas decreases. Due to updated background concentrations and other updates, the TAR calculated a value for the reference $CO_2$ gas that was 13 percent smaller than the similar calculation for the SAR; because all GWPs are calculated with reference to $CO_2$, this increases other GWPs proportionally.[8] The AR4 calculation for the reference $CO_2$ gas, taking into account the continued increase in background concentration, was 8.7 percent lower than the TAR value.[9] The AR4 also relied on a number of publications that used experiments to improve the estimates of the radiative efficiencies of a number of the fluorinated compounds, with changes of up to 40 percent in those values for some compounds.[10] In addition, improved estimates of the effects of methane on stratospheric water vapor, itself a greenhouse gas, led to an increase in the factor used to estimate the GWP of methane due to that effect of 15 percent rather than 5 percent as in the TAR and SAR.[11]

As such, each successive assessment provides more accurate GWP estimates as experiments and improved computational methods lead to more accurate estimates of the radiative efficiencies, atmospheric lifetimes, and indirect effects of the various gases. Additionally, the more recent assessments reflect more up-to-date background concentrations, which are necessary for accurately calculating the radiative efficiency of the different gases. The AR4 GWPs for these F–GHGs are therefore more accurate for comparison of the climate impacts of individual GHGs than the values from the IPCC SAR that were originally adopted in Table A–1, and are more appropriate for supporting the overall goals of the GHGRP. For the reasons stated above, we disagree with the commenters that stated there is not a strong scientific basis for updating the GWPs in Table A–1 to reflect the values in the IPCC AR4.

In the development of the 2009 final reporting rule, the EPA responded to concerns regarding the use of the GWP metric and determined that GWP is the most prudent and appropriate approach for comparison of the climate impacts of individual greenhouse gases that have varying radiative efficiencies and atmospheric lifetimes (see Volume 2 of USEPA's Response to Public Comments on the Mandatory Greenhouse Gas Reporting Rule: Selection of Reporting Thresholds, Greenhouses Gases, and De Minimis Provisions, Docket Id. No. EPA–HQ–OAR–2008–0508–2259). The GWP metric inherently reflects the atmospheric life-span of GHGs and is an internationally accepted standard recognized and utilized by the IPCC, UNFCCC, and Kyoto Protocol.

As discussed in the preamble to the proposed amendments, one of the reasons we proposed AR4 GWPs for the chemicals currently in Table A–1 was to maintain consistency with the Inventory and similar U.S. domestic programs. This is consistent with our approach to date under the GHGRP; in the 2009 final reporting rule, the EPA specifically chose to use GWPs published in the IPCC Second Assessment Report for GHGs included in that report to allow comparisons between the Inventory, other U.S. climate programs, and the GHGRP. The EPA has received

[7] IPCC TAR WG1 (2001), Houghton, J.T.; Ding, Y.; Griggs, D.J.; Noguer, M.; van der Linden, P.J.; Dai, X.; Maskell, K.; and Johnson, C.A., ed., Climate Change 2001: The Scientific Basis, Contribution of Working Group I to the Third Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, ISBN0–521–80767–0 (pb: 0–521–01495–6), p. 385.

[8] IPCC TAR WG1, p. 386.

[9] IPCC Fourth Assessment Report (AR4), 2007. *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, p. 211.

[10] AR4, p. 211.

[11] AR4, p. 214.

encouragement from stakeholders to continue to use GHG data from the GHGRP to complement and support development of the Inventory, such as for improvements to emissions estimates from the petroleum and natural gas production source categories. Using consistent GWPs allows for more efficient review of data collected through the GHGRP and other U.S. climate programs and reduces the potential errors that may arise when comparing multiple data sets or converting GHG emissions or supply based on separate GWPs. It also reduces the burden for reporters and agencies to keep track of separate GWPs when submitting information to these programs.

As discussed in the preamble to the proposed amendments, countries that submit inventories to the UNFCCC have decided to begin using GWP values from the IPCC AR4 for annual inventories submitted in 2015 and expected to continue to use the AR4 GWPs for several years thereafter. Accordingly, the United States has a policy commitment to begin using GWP values from the IPCC AR4 for annual inventories submitted in 2015 and beyond. Because one of the purposes of the GHGRP is to supplement the Inventory, the EPA determined that it is most appropriate to adopt the AR4 GWPs for the compounds currently in Table A–1 for the annual GHGRP reports submitted in 2014, in order to meet the needs of the Inventory timeframe. As noted in Section II.A.1 of this preamble, use of the AR4 GWPs will also ensure compatibility of the GHGRP with the President's Climate Action Plan and the U.S. commitment to GHG emission reductions to the United Nations.[12]

The EPA agrees with commenters that using the latest and most robust GWPs from the IPCC AR5 for the compounds currently in Table A–1, once AR5 is published, could lead to more accurate assessments of climate impacts in the future. We considered waiting until publication of AR5 values and adopting those values for Table A–1, as suggested by commenters. We balanced the benefits of adopting more recent GWPs to better characterize national GHG emissions and inform EPA policies with the benefit of retaining consistency across national and international programs, particularly the Inventory, for compounds that are included in AR4, and we believe that a potential gain in accuracy does not justify the loss of consistency with UNFCCC reporting (and associated policy analysis) that would result.[13] Specifically, we considered that even though we anticipate that the AR5 GWPs will be published in coming months, the AR5 assessment has not been yet adopted by the UNFCCC or other national or international programs and is not likely to be in the near future.[14] Wholesale adoption of AR5 GWPs by the GHGRP while other EPA and international programs are using AR4 GWPs likely would cause stakeholder confusion, create an ongoing need to explain the distinction in GWPs in subsequent actions, and complicate decision-making.

The adoption of AR4 GWPs for those compounds currently in Table A–1 will improve the GHGRP, and by extension, EPA climate policies, by incorporating more scientifically accurate GWPs than the SAR values originally adopted in Table A–1. This approach also ensures that the GHGRP uses widely relied on, published, peer-reviewed GWP data. As discussed in the next comment and response, the EPA may consider adoption of AR5 GWPs or other GWP values for compounds currently listed in Table A–1 if these values are adopted by the UNFCCC and the global community.

*Comment:* Several commenters were concerned about the frequency with which the EPA intends to update Table A–1 in the future. One commenter contended that the EPA's proposed GWP revisions will not achieve consistency with the Inventory because it would create confusion across reporting years. The commenter stated that industry should not have to adjust data collection and reporting protocols due to revised GWPs after only three years of reporting. Commenters were concerned that frequent future revisions to GWPs would place unnecessary burdens on reporters and would affect other regulatory programs that rely on the Part 98 GWPs, such as the title V and Prevention of Significant Deterioration (PSD) permitting programs under the EPA's Tailoring Rule (75 FR 31532, June 3, 2010). Two additional commenters expressed concern that future revisions to the GWP values by the IPCC would drive further rule revisions by the EPA. The commenters stated that if the EPA's desire is to ensure consistency between the Inventory and GHGRP, future changes to the GWP values seem inevitable. They stated that these changes, if adopted, may require sources to constantly change their data gathering and evaluation protocols for reporting and require sources to continually revise (or have the EPA revise) their prior year submissions.

*Response:* At the time that Part 98 was proposed, it was the EPA's intent to require reporting of emissions of individual gases as well as emissions in $CO_2e$. We explained that because GHGs have different heat trapping capacities, they are not directly comparable without translating them into common units (74 FR 16453, April 10, 2009). We intended at that time to allow for future updates of the GWPs in Table A–1 to reflect advances in the scientific research on the heat trapping capacities of individual gases. For example, in the proposed 2009 GHG Reporting Rule, the EPA explained the collection of individual gas emissions and conversion of emissions to $CO_2e$ and noted that ''reporting the quantity and type of gas emitted allows for future recalculation of $CO_2e$ emissions in the event that GWP factors change'' (74 FR 16448, April 10, 2009).

As discussed in this section of this preamble, we have determined that it is appropriate to update certain GWP values already in Table A–1 to the IPCC AR4 values, adopted by the UNFCCC for national inventory reporting beginning in 2015, at this time. However, as stated in the preamble to the 2013 Revisions proposal, the EPA does not intend to revise the GWPs in Table A–1 each time new data are published in the scientific literature. Instead, we intend to update GWPs periodically in the future as the UNFCCC reporting guidelines change (i.e., when the UNFCCC adopts values from a future IPCC assessment for

[12] The President's Climate Action Plan, Executive Office of the President, June 2013, p. 4, *http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf*; Jonathan Pershing, Clarification of the U.S. Economy-Wide Target, *http://unfccc.int/files/bodies/awg-lca/application/pdf/20120517_usa_0940.pdf*; and UNFCCC GE.11–70204, Subsidiary Body for Scientific and Technological Advice 34th Session, 6–16 June 2011, Compilation of economy-wide emission reduction targets to be implemented by Parties included in Annex I to the Convention, FCCC/SB/2011/INF.1/Rev.1, pp. 7–8, *http://unfccc.int/resource/docs/2011/sb/eng/inf01r01.pdf*.

[13] While the AR5 GWPs have not been publicly available during the development of this rule, the GWPs published in a recent article are likely to be the basis of updated GWPs in AR5. See Hodnebrog, Ø., M. Etminan, J. S. Fuglestvedt, G. Marston, G. Myhre, C. J. Nielsen, K. P. Shine, and T. J. Wallington, ''Global Warming Potentials and Radiative Efficiencies of Halocarbons and Related Compounds: A Comprehensive Review,'' *Reviews of Geophysics,* Accepted manuscript online: 24 APR 2013.

[14] AR4 was published in 2007 and is being adopted for Inventory reporting starting in 2015. ''Revision of the UNFCCC reporting guidelines on annual inventories for Parties included in Annex I to the Convention,'' FCCC/CP/2011/9/Add.2, Decision 6/CP 17, 15 March 2012, available at *http://unfccc.int/resource/docs/2011/cop17/eng/09a02.pdf#page=23*. AR5 is anticipated to be published in late 2013; adoption of AR5 for Inventory reporting is likely to be on a similar timeframe, if at all.

compounds that are currently listed in AR4) and possibly as updated GWPs for new compounds are published in IPCC or WMO assessments or in other peer-reviewed literature. We note that there are generally significant lag times in adoption of new values by the UNFCCC. In the past, the parties to the UNFCCC have only infrequently updated the GWPs that countries use to report their GHG emissions (i.e., less than once every 10 years). Significant time may pass between publication of peer-reviewed GWPs, their adoption into IPCC scientific assessments of GWPs, and their subsequent adoption into the UNFCCC reporting guidelines. With these considerations, we will continue to weigh the benefits of updating the GHGRP GWPs to more current values against the benefits of maintaining the values used by the international reporting community and the values used in other U.S. climate programs, such as the joint EPA and National Highway Traffic Safety Administration (NHTSA) Light-Duty Vehicle GHG Emission Standards. The latter benefits include minimizing confusion and policy uncertainty. However, we consider periodic updates to Table A–1 to be necessary to ensure that the GHGRP incorporates scientific advances in climate science to best inform EPA policies and programs, such as regulatory options and voluntary reduction partnerships, and to provide accurate information to other stakeholders. We also acknowledge that although the GHGRP may collect and publish data using the AR4 GWPs or GWPs published in other peer-reviewed literature, the EPA and other policymakers may analyze the data collected using other GWPs as desired. For example, we received comments that the EPA should finalize the GWP values from IPCC AR5 when they are released (discussed above in this section of the preamble); while we are instead finalizing the GWP values from AR4, the GHGRP data is presented in a manner that stakeholders can calculate $CO_2$ other GWPS as desired.

The EPA recognizes that for some subparts, adoption of higher GWPs for certain compounds in Table A–1 (e.g., methane) could potentially place some facilities above the reporting threshold for Part 98 and increase the number of facilities that are affected by other EPA or state programs that have thresholds that rely on the GWPs in Table A–1 (e.g., EPA's Tailoring Rule) (see Section II.A.2.c and Section V of this preamble).We acknowledge that frequent adoption of new GWP values could also disrupt the continuity of data across a time-series, making it more difficult for regulatory agencies and stakeholders to analyze and compare previously reported data. The EPA is addressing that concern for these final amendments by publishing a consistent time series with the revised GWPs while maintaining the certified emission reports; see Section III.B of this preamble for more information. With these considerations, the Agency intends to balance the need to update Table A–1 to incorporate scientific advancements with the impact on the number of reporters subject to Part 98, the accuracy of reported emissions, and the impacts to other regulatory programs.

b. Summary of Comments and Responses on the Use of 100-Year GWPs

*Comment:* One commenter agreed that the 100-year GWPs should be updated, but objected to the value the EPA proposed for methane, stating that the GWP of 25 (from the IPCC AR4) is out of date. The commenter stated that subsequent to the completion of AR4, the National Aeronautics and Space Administration (NASA) published an article in *Science* (Shindell, 2009) [15] further updating the value for methane's 100-year GWP to incorporate net direct and indirect radiative forcing impacts from aerosols, which the prior AR4 estimates did not contemplate. This commenter contended that the EPA should adopt NASA's GWP of 33 for methane on a 100-year time horizon. Otherwise, the commenter maintained, known net impacts from aerosols will be ignored in the reported (calculated) emissions values, and decision-makers will not be informed of the correct impact of sources of methane emissions when developing climate action plans. The commenter stated that if the EPA does not use NASA's GWP value, then the agency should wait until the release of the IPCC AR5 and use that report's GWP for methane.

Several commenters requested that the EPA reconsider our prior decision to adopt only a 100-year GWP for methane. While many commenters supported the EPA's use of 100-year GWPs in the rule, we received a number of generalized messages requesting that we use 20-year GWP values in addition to the 100-year values. These commenters believe the use of the 20-year GWPs in the GHGRP would have important policy implications, because the exclusive use of a 100-year GWP implies that the only period of concern for climate change is 100 years. The EPA received five unique comment letters recommending that facility and supplier $CO_2e$ emissions data be calculated using both the 100-year GWP and 20-year GWP. One commenter added that facilities emitting 25,000 tons $CO_2e$ per year (calculated using either a 100-year or 20-year GWP) should be required to report under Part 98. Another commenter requested that the EPA use only the 20-year values, instead of the 100-year values.

Several commenters referenced a variety of articles, studies, and conference proceedings supporting the idea that the reduction of methane is critical to slow down the rate of global warming and to reduce future peak temperatures. They believe the 100-year GWP the EPA uses de-emphasizes the importance and potential benefits of reducing the emissions of methane.

Two commenters disagreed with the EPA's rationale for requiring reporting based solely on 100-year GWP values, which is to maintain consistency with the UNFCCC's agreement to report national inventories for international purposes based on the 100-year GWP. Another commenter argued the GHGRP is intended to inform regulation of GHGs under the CAA. This commenter notes the IPCC has stated, ''if the policy emphasis is to help guard against the possible occurrence of potentially abrupt, non-linear climate responses in the relatively near future, then a choice of a 20-year time horizon would yield an index that is relevant to making such decisions regarding appropriate greenhouse gas abatement strategies.'' [16] Other commenters supported the EPA's adoption of the AR4 GWP for methane of 25, which is based on the 100-year time horizon.

*Response:* As noted in the ''Response to Comments on Final Rule, Volume 3: General Monitoring Approach, the Need for Detailed Reporting, and Other General Rationale Comments'' (see Docket Id. No EPA–HQ–OAR–2008–0508–2260), the EPA selected the 100-year GWPs because these values are the internationally accepted standard for reporting GHG emissions. For example, the parties to the UNFCCC agreed to use GWPs that are based on a 100-year time period for preparing national inventories, and the reports submitted by other signatories to the UNFCCC use GWPs based on a 100-year time period, including the GWP for methane and certain GHGs identified as short-lived

[15] Shindell, D. T., Faluvegi, G., Koch, D. M., Schmidt, G. A., Unger, N., & Bauer, S. E. (2009). Improved attribution of climate forcing to emissions. Science, 326(5953), 716–718.

[16] IPCC, Climate Change 1994: Radiative Forcing of Climate Change and an Evaluation of the IPCC IS92 Emission Scenarios 229. (John T. Houghton et al., ed., Cambridge University Press 1995).

climate pollutants. These values were subsequently adopted and used in multiple EPA climate initiatives, including the EPA's SNAP program and the Inventory, as well as EPA voluntary reduction partnerships (e.g., Natural Gas STAR). The EPA noted at the time that Part 98 was finalized that alternative metrics for comparing the potential climate impacts of different GHGs were being considered by the IPCC. However, the IPCC has not made a recommendation regarding adoption of the 20-year metric. Furthermore, although the UNFCCC has updated the international reporting guidelines to reference GWPs from AR4 for the year 2015 and beyond, the guidelines continue to specify GWPs with a 100-year time horizon. We have reviewed the NASA Science publication (Shindell et al., 2009) [17] referenced by the commenter that provides a 100-year GWP for methane of 33. However, as discussed above, the EPA has decided to adopt AR4 values across the board because it is beneficial for both regulatory agencies and industry to use the same GWP values for these GHG compounds because it allows for more efficient review of data collected through the GHGRP and other U.S. climate programs, reduces potential errors that may arise when comparing multiple data sets or converting GHG emissions or supply based on separate GWPs, and reduces the burden for reporters and agencies to keep track of separate GWPs.

Regarding the use of 20-year GWPs, human-influenced climate change occurs on both short (decadal) and long (millennial) timescales. While there is no single best way to value both short and long-term impacts in a single metric, the 100-year GWP is a reasonable approach that has been widely accepted by the international community. If the EPA were to adopt a 20-year GWP solely for methane, or for certain other compounds, it would introduce a metric that is inconsistent with both the GWPs used for the remaining Table A–1 gases and with the reporting guidelines issued by the UNFCCC and used by the Inventory and other EPA programs. Additionally, the EPA and other federal agencies, calculating the impact of short-lived climate forcers using 100-year GWPs, are making reduction of short-lived climate forcers a priority.[18] For the reasons described above, the EPA is retaining a 100-year time horizon as the standard metric for defining GWPs in the GHGRP.

c. Summary of Comments and Responses on the Relationship of the Final Rule to Other EPA Programs (e.g., Tailoring Rule Programs) or State Programs

This section summarizes the significant comments and responses related to the relationship between the final rule and other EPA programs. See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to this topic.

*Comment:* Several commenters noted that changes to the GWPs in Table A–1 and any changes to the gases listed in Table A–1 create discontinuities in the assessment of emissions under permitting rules, which can create shifts in permitting requirements. In the case of title V permitting, commenters stated that facilities that become subject to title V as the result of revisions to Table A–1 should be allowed at least one year from the publication date of the revisions to assess the impact of the changes, submit a title V application, or apply for a synthetic minor limit to avoid title V. Commenters further stated that if a source has taken a synthetic minor limit on its $CO_2e$ emissions to remain below the title V applicability threshold and is unable to meet the synthetic minor limit due to the revisions to the GWPs, then facilities should have a one year period to assess emissions, determine if the synthetic minor permit is no longer viable, and apply for the appropriate permit. Commenters stressed that there should be no penalty for non-compliance with the synthetic minor limit or title V permitting requirement. Commenters expressed similar concerns regarding new construction and modifications becoming subject to PSD requirements due to revisions to GWP values.

Some commenters argued revisions to the GWP values impact compliance with existing $CO_2e$ permit limits for PSD avoidance, Best Available Control Technology (BACT), and plant-wide applicability limits (PAL). They also requested sources be allowed to continue using the old GWP values for a period of one year, so that affected facilities may seek revisions to their permits, redeterminations, or recalculation of these limits, as applicable. The commenters recommended a provision designed to allow facilities time to incrementally adjust to changes in the current rules be made available if a change in the GWPs presents a problem for meeting a PAL that cannot be resolved.

One commenter asserted that while section 114 of the CAA, 42 U.S.C. 7414, is cited as the basis for the proposed rule, section 114 does not empower the EPA to change the thresholds for major source determinations under other programs, such as the Prevention of Significant Deterioration (PSD) and title V permitting programs. The commenter explained that section 114 governs recordkeeping and inspections, and that it allows the EPA to require sources to provide data about air emissions. The commenter stated that the amendments to the GWP values affect the major source and permitting thresholds and therefore, any changes to Table A–1 must be proposed and finalized under the EPA's authority to implement the relevant permitting program. Specifically, the commenter asserted that amendments to the PSD program must be made pursuant to CAA sections 160–169, the Indian Country minor source rule must be amended pursuant to CAA sections 171–179B, and the title V program must be amended pursuant to CAA sections 501–507. The commenter stated that revisions to Table A–1 should be evaluated and processed by EPA's Office of Air Quality Planning and Standards (OAQPS) because OAQPS published the Tailoring Rule and traditionally handles substantive permitting regulations. Several commenters requested the EPA provide clear guidance in the final rule addressing how PSD and title V issues resulting from GWP revisions should be handled.

*Response:* As the EPA noted in the preamble to the Tailoring Rule (75 FR 31514, June 3, 2010), the Tailoring Rule codifies Table A–1 to Subpart A of 40 CFR part 98 for the purpose of calculating emissions of $CO_2e$ for determining Prevention of Significant Deterioration (PSD) and title V applicability for GHG (75 FR 31522). This approach was adopted in lieu of codifying IPCC values, which may change more frequently over time, and to provide certainty as to which GWP values need to be used. We explained, ''[a]ny changes to Table A–1 of the mandatory GHG reporting rule regulatory text must go through an appropriate regulatory process. In this manner, the values used for the permitting programs will reflect the latest values adopted for usage by the EPA after a regulatory process and will be consistent with those values used in

[17] Shindell, D. T., Faluvegi, G., Koch, D. M., Schmidt, G. A., Unger, N., & Bauer, S. E. (2009). Improved attribution of climate forcing to emissions. Science, 326(5953), 716–718.

[18] E.g., U.S. Leadership on the Global Methane Initiative (*http://www.epa.gov/globalmethane/*) and Climate and Clean Air Coalition to Reduce Short-Lived Climate Pollutants (*http://www.state.gov/r/pa/prs/ps/2012/02/184055.htm*).

the EPA's mandatory GHG reporting rule'' (75 FR 31532). Furthermore, this Part 98 notice-and-comment process ''will ensure advance notice of such a change'' for sources that may be subject to the Tailoring Rule. *See* U.S. EPA, ''Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments,'' May 2010 (Docket Id. No. EPA–HQ–OAR–2009–0517–19181), p. 101, n.5. Thus, as the EPA noted in the proposal to these Part 98 revisions, because permitting applicability is based partly on $CO_2e$ emissions, an amendment to Table A–1 may affect program applicability for a source.

The EPA disagrees with the commenter who asserted that the EPA is changing the thresholds for major source determinations under the PSD and title V permitting programs in this rule. The Tailoring Rule references GWP values from Part 98 Table A–1 and uses them to calculate $CO_2e$ emissions values, so the GWP changes in this final rule may affect the calculation of GHG emissions for individual sources relative to those thresholds. However, this final rule does not modify the major source thresholds of the PSD and title V permitting programs or any other EPA program, nor does it modify the ''subject to regulation'' thresholds for GHG established under the Tailoring Rule.

The EPA acknowledges that amendments to Table A–1 may result in an existing facility becoming subject to title V permitting. A stationary source may be a major source subject to title V permitting requirements solely on the basis of its GHG emissions, provided the source's emissions exceed the thresholds established in the Tailoring Rule. GHG emission sources that emit or have the potential to emit (PTE) at least 100,000 (tons per year) TPY $CO_2e$ (calculated using GWPs), and also emit or have the PTE 100 TPY of GHGs on a mass basis (calculated without GWPs) are required to obtain a title V permit if they do not already have one.

While the EPA does not believe that many sources will change their title V applicability status as a result of this Table A–1 revision, it is conceivable that an existing source with a PTE just beneath the title V thresholds on a $CO_2e$ basis may find that the revised GWP values result in a PTE calculation that makes the source a ''major source'' under title V. This determination would depend on what GHG compound(s) the source emits, the amount of the compound emitted, and if the GWP of the compound is increasing or decreasing. For example, a hypothetical source that emits only methane and no other GHG compounds or other regulated NSR pollutants has a PTE of 90,000 TPY $CO_2e$ in 2012 and is therefore not a title V major source. However, in 2014, once the new GWPs are effective for this hypothetical source, it could have emissions that make it a major source of GHG under title V, because its mass emissions are at least 100 TPY and its calculated PTE would be approximately 107,000 TPY $CO_2e$ as a result of methane's GWP increasing from 21 to 25 (assuming the source does not take a restriction on its methane emissions).

A source applying for a title V permit for the first time must submit its permit application within 12 months after the source ''becomes subject to the [operating] permit program'' or such earlier time that the permitting authority may require (*see* 40 CFR 70.5(a)(1)). As the EPA noted in the title V Narrowing Rule,[19] a source ''becomes subject to'' title V permitting when there is an EPA-promulgated or approved permit program ''applicable to the source.'' *See* 75 FR 82259, n. 8; CAA section 503(a). Thus, the exact date that the new GWPs will become effective for purposes of title V applicability may vary, depending on the status of the applicable title V program as it relates to GHG sources and on how the GWPs are incorporated into the applicable title V permit program. For example, the federal part 71 permit program will begin using the revised GWPs upon the effective date of this rule, and some states may similarly have title V programs that automatically update the GWP values. However, other states may have approved title V programs that require revision to use the revised GWP values for title V permitting, or may even still lack authority to permit major sources of GHG under title V. In the example above, the hypothetical source of methane whose PTE calculation increased to 107,000 TPY $CO_2e$ would have up to a year from becoming subject to title V permitting under the applicable title V program to submit an application for a title V operating permit.

A source may be able to avoid the requirement to have a title V permit if it has been issued a synthetic minor source permit that limits its PTE below the major source thresholds (including the $CO_2e$-based ''subject to regulation'' threshold) for title V applicability.[20] It may be advisable for the terms of the synthetic minor permit to impose limits on GHGs on a mass basis, rather than a $CO_2e$ basis (even where the purpose of the permit is to limit a source's PTE below 100,000 $CO_2e$). For such mass-based limits, a change in the GWP of the pollutant does not render the source out of compliance with the synthetic minor source limit, although the source may need to obtain a revised synthetic minor source limit to maintain its synthetic minor source status and avoid the need for a title V permit as a major source (*i.e.,* if the change in GWPs makes the source a title V major source under the conditions of the original minor source permit).

The EPA recognizes that there also may be synthetic minor source permit limits that are established solely in terms of $CO_2e$. This may occur at a source that emits multiple GHG compounds and seeks flexibility in managing its GHG emissions. In such cases, the source should analyze any permit and regulatory provisions governing the calculation of $CO_2e$ for purposes of compliance with the permit. Even where the calculation of $CO_2e$ under those provisions would change for a source, the EPA believes most sources will still be able to comply with its synthetic minor source permit because there is no GWP change for $CO_2$ and the change in GWP for the other GHG compounds is generally small. Thus, we do not expect the GWP revisions to significantly alter $CO_2e$ emissions for most types of sources, particularly sources in which most of their GHG emissions result from fuel combustion. However, where a source anticipates difficulty in compliance with its synthetic minor source limit, it should work with its permitting authority to revise its permit to ensure compliance with the requirements of the permit and of title V.

The EPA also acknowledges that this action will affect the applicability of the PSD permit program for the proposed construction of new sources and proposed modifications of existing sources. As of the effective date of the Part 98 rule revisions, proposed sources and proposed modifications, including proposed PALs and PAL renewals, will need to calculate their GHG PTE and determine PSD applicability based on the revised GWPs. However, PSD permitting obligations should not be affected for a source or modification that has either already obtained a PSD permit or begun actual construction at a time when it was legitimately

[19] Action To Ensure Authority To Implement Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule (75 FR 82254, Dec. 30, 2010).

[20] In general, a source has up to one year to either *apply for* a title V permit, or *be issued* a synthetic minor permit to avoid title V applicability (but merely applying for a synthetic minor permit within 12 months is not sufficient to avoid title V applicability).

considered a source that did not require a PSD permit (See 75 FR 51593–94, August 20, 2010). This approach is consistent with our PSD permitting regulations that provide: ''[n]o new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states the major stationary source or major modification will meet those requirements'' 40 CFR 51.166(a)(7)(iii); 40 CFR 52.21(a)(2)(iii). We do not interpret these provisions to prevent a source or modification from continuing construction when that source or modification has been legitimately determined not to trigger PSD permitting obligations and has begun actual construction before the effective date of the Part 98 regulations. Similarly, we do not interpret these provisions to prevent a source with a PSD permit issued before the Part 98 regulations become effective from beginning or continuing construction under that permit, as long as that permit has not expired.

Likewise, the GWP revisions should not affect past permitting actions for a source that has obtained a final PSD permit before these revisions to Part 98 become effective, regardless of whether or not that PSD permit included GHG limits. The EPA generally does not require reopening or revision of PSD permits that are issued prior to the effective date of a new requirement. See 75 FR 31593; Memorandum from John S. Seitz, Director OAQPS, New Source Review (NSR) Program Transitional Guidance, page 6 (March 11, 1991). Consistent with this approach, PSD permits based on earlier GWPs that are issued in final form prior to the effective date of these Part 98 rule revisions would not have to be revised or reopened solely due to the promulgation and effectiveness of these Part 98 rule revisions. Furthermore, compliance with final PSD permits that include BACT limits based on $CO_2e$, PALs based on $CO_2e$, and with other permit conditions that utilize GWPs from Table A–1 may be determined based on the GWPs that were in effect at the time of permit issuance (even if the permit does not specify the applicable GWP value).

While adoption of the Part 98 revisions will automatically apply in some PSD permit programs, other programs will have to engage in a state implementation plan (SIP) adoption process. Specifically, these new GWP values will apply immediately upon the effective date of this rule for PSD programs administered by EPA Regions and for those administered by ''delegated'' states that rely upon 40 CFR 52.21, as well as in any state with a SIP that automatically updates when either 40 CFR sections 51.166 or 52.21 are revised (e.g., the state regulations incorporate by reference 40 CFR 52.21 without specifying an ''as of'' date of incorporation). However, some states will need to adopt the changes to the GWPs into their SIP before they become effective in their state permitting programs. This provides additional transitional time for sources in those states to comply with the required changes before the GWPs become effective in those states.

Likewise, as noted above, revisions to the GWPs will occur automatically for federal title V permitting. Some states may also have title V permit programs that automatically update, while other states may require revisions to their approved title V permit programs before the GWP revisions become effective for purposes of title V permitting.

Given the transitional times discussed above, we anticipate that most facilities will have a period to incrementally adjust to the changes in this final rule. Because development of the 2015 Inventory will rely in part on data from the GHGRP reports submitted in 2014, it is prudent for existing GHGRP reporters to calculate facility GHG emissions or supply using the revised GWPs in Table A–1 for their reporting year 2013 annual reports. Accordingly, the EPA is finalizing the schedule for the final amendments to Part 98 as proposed, and is not finalizing a transitional period. See Section III.A of this preamble for additional information.

Regarding the requests for the EPA to provide guidance, as we noted in the Response to Public Comments on the Tailoring Rule,''[i]n the event that we propose a change to GWP values, we will work with permitting authorities as necessary to provide guidance to sources on transitional issues'' Docket Id. No. EPA–HQ–OAR–2009–0517–19181, p. 101 (footnote). A number of EPA offices, including OAQPS, have worked collaboratively in developing this response. Thus, in addition to the guidance provided in this preamble regarding the application of the Table A–1 revision to state PSD and title V programs and to previously-issued preconstruction permits, the EPA will continue to work with permitting authorities to address implementation concerns, as needed.

*Comment:* Several commenters expressed concern that the proposed rule appeared to propose retroactively applying amended GWPs to prior year reports. The commenters also stated that the EPA did not provide a regulatory analysis of how retroactively applying GWPs would affect PSD or title V permitting obligations. Five commenters expressed concern that the proposed revisions to Table A–1 could result in enforcement actions associated with previous determinations under these regulatory programs. These commenters expressed concern that such a change would stall current permit projects and possibly reopen existing permits that were previously approved. In particular, some commenters were concerned about the impact on landfills, which require permits to install combustion devices for compliance under New Source Performance Standards (NSPS) and for landfill gas renewable energy projects. They recommended that the EPA clarify that any changes to the GWPs and GHG reporting requirements would not be applied retroactively to prior determinations made under PSD, title V, or any other regulatory programs that rely on the GWP values in Table A–1.

*Response:* The EPA did not intend to suggest in the proposed rule that the revised GWPs in Table A–1 would be retroactively applied under the PSD and title V permitting programs or for any other regulatory purpose. Thus, as explained above, PSD permits based on earlier GWPs that are issued in final form (to landfills or to other types of sources) prior to the effective date of these Part 98 rule revisions would not have to be revised or reopened solely due to the promulgation and effectiveness of these Part 98 rule revisions. Moreover, as to the commenter's concern regarding the impact on landfills, we note that, generally because reductions in methane will be credited more highly in PSD applicability determinations, we would expect these project to be less, rather than more, likely to trigger PSD were the revised Table A–1 values to apply.

As discussed above, we do not see any cause to deviate from our historical practice of not requiring PSD permits to be reopened or amended to incorporate requirements that take effect after the permit is issued. With these considerations, the EPA does not expect the revised GWPs to be applied retroactively to prior PSD and title V permitting determinations made based on prior years' GHG emissions, though these revisions will apply to permitting determinations made after the effective date of these Part 98 rule revisions, as described above. As such, we do not expect that facilities will be subject to the reopening of a previously approved PSD or title V permit solely based on

application of the amended GWPs in Table A–1 to prior years' emissions.

For example, assume that a new major stationary source gets a PSD permit in 2011, undergoing a BACT analysis for GHGs. The permit that establishes the source's $CO_2e$ emission limit(s) are based on the Table A–1 values that are in place at the time of permit issuance (i.e., from the 2009 GHG reporting rule). In 2014, after the effective date of the 2013 Table A–1 revisions, the source would continue to determine compliance with their PSD permit by the original permit conditions that based applicability and BACT limits on the GWP values in the 2009 GHG reporting rule. Then, in 2015, the company submits a PSD permit application to undergo a modification at the source. In order to determine PSD applicability for the project, the applicant and permitting authority should use the most updated values of GWPs that are in effect, which at this point would be the GWP values in the 2013 Table A–1 revisions. Assuming that this source is in a state that automatically updates its SIP when the federal rules are amended, it would determine its emissions increase from the 2015 proposed modification (e.g., ''baseline actual emissions'' and ''projected actual emissions'') by using the GWP values in the 2013 Table A–1 revisions.

*Comment:* Several commenters expressed concerns with how state and regional programs that rely on the GWP values in Part 98 may be affected by the EPA's revisions to Table A–1. One commenter was particularly concerned about the potential of increased complexity in comparing emissions between programs and between reporting years. For example, the commenter notes that some states have incorporated the GWP values in Part 98 into their state reporting programs to reduce the reporting burden. The commenter explained that these states will either have to propose and approve rule changes to update their GWP values to match those in Part 98 or certain facilities will be required to report two sets of $CO_2e$ data: One to the EPA and one to the state or local program. The commenter recommends that, in order to ensure consistent reporting across federal, state and regional reporting programs, the agency must ensure that the reporting revisions currently and in the future are well-coordinated with state and local reporting programs.

*Response:* As noted in the preamble to the final 2009 Part 98 (74 FR 56260), the EPA has intended to periodically update Table A–1 when GWP values are evaluated or re-evaluated by the scientific community. The revised GWP values in Table A–1 will likely result in changes to the $CO_2e$ estimates of GHGs emitted or supplied. As noted by the commenters, the revisions may affect the state and regional programs that rely on the GWP values in Table A–1.The EPA recognizes the importance of state and local GHG programs in evaluating regional GHG emissions and in implementing GHG reduction strategies. In reviewing Table A–1, the EPA considered the benefits of having consistent GWPs across federal, state, and regional programs. In particular, we recognize that using consistent GWPs across these programs increases the ease with which agencies can analyze local emissions in light of national estimates. As discussed in Section II.A.2.a of this preamble, the EPA balanced the benefits of updating the GHGRP GWPs to more current values with the U.S. commitment to maintain consistency with values used by the UNFCCC and the values used in other U.S. climate programs. The EPA's primary goal in updating Table A–1 is to ensure that the GHGRP incorporates scientific advances in climate science to better inform EPA policies and programs. As noted previously, we recognize that frequent updates to Table A–1 may cause confusion or create difficulties with reviewing prior year data based on different GWP values. Because of these concerns, we do not intend to update Table A–1 frequently (see Section II.A.2.a of this preamble for additional information). Although the EPA anticipates making periodic updates that increase the accuracy of the GHGRP, we anticipate balancing the frequency of these changes with the impacts to federal, state, and local programs.

We note that the applicability, compliance schedule, calculation methodologies, or any other requirements established under these non-Part 98 programs are outside the scope of these amendments. Concerns related to implementation and compliance with other state and regional programs that rely on Table A–1 cannot be addressed through Part 98. However, the EPA intends to work with state and regional programs to address implementation concerns. As noted in the response above, it is likely that some PSD SIPs will need to be revised as a result of this action, since some state rules do not automatically update when Part 98 is updated.

3. Summary of Other Corrections and Final Amendments to Subpart A

In addition to the amendments to global warming potentials in Table A–1, we are also finalizing corrections and other clarifications to certain provisions of subpart A of Part 98. The more substantive corrections, clarifying, and other amendments to subpart A are found here. We are finalizing all of the minor corrections to subpart A presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934).

The EPA has finalized, with revisions, the amendment to require facilities to report their latitude and longitude if the facility does not have a physical street address. The EPA received comment that the rule should specify the precise latitude and longitude that should be reported (i.e., centroid of the plant or part of the ''administration building''). As a result of this comment we revised the requirement to clarify that facilities required to submit a latitude and longitude should report the geographic centroid or center point of the facility.[21]

The final amendments replace the proposed term, ''ORIS code,'' with the term ''plant code,'' and the proposed definition has been revised to include both facilities that have been assigned a Plant ID code by the Department of Energy's (DOE) Energy Information Administration (EIA) and those have not been assigned this code but that otherwise report to EPA's Clean Air Markets Division (CAMD) and so have been assigned a plant code by CAMD. The final amendments reflect a definition of ''plant code'' under 40 CFR 98.6 that is largely derived from the definition of this term on the Certificate of Representation (EPA Form 7610–1 (Revised 8–2011))[22] that is used for domestic $NO_X$ and $SO_2$ trading programs. The associated reporting requirement that was originally proposed at 40 CFR 98.3(c)(13) has been divided into a general facility-level reporting requirement under subpart A (to identify reporters who have been assigned a plant code) and configuration-level requirements to report the code under subparts C and D.[23]

The EPA is not finalizing the definition of ''Fluidized Bed Combustor (FBC)'' because the associated subpart C emissions factors are not being finalized at this time. See Section II.B of this

[21] We are finalizing confidentiality determinations for the revised data element in 40 CFR 98.3(c)(1). See Section V of this preamble for additional information.

[22] Available at *http://www.epa.gov/airmarkets/business/docs/forms/CertofRepFINAL.pdf.*

[23] We are finalizing confidentiality determinations for the new data elements in 40 CFR 98.3(c)(13) and 40 CFR 98.36. See Section V of this preamble for additional information.

preamble for more information about the FBC-specific emission factors.

We are finalizing a provision, as proposed, to include instructions for the reporting of a United States parent company legal name and address. The final amendments to the parent company reporting requirements under 40 CFR 98.3(c)(11)(viii) reflect that reporters are required to use any common naming rules or guidelines provided via the Electronic Greenhouse Gas Reporting Tool (e-GGRT) in formatting and submitting their parent company names. This will ensure consistent reporting of a given parent company name between different facilities with that parent company and transparency of which facility's or supplier's emissions may, in whole or in part, be attributed to a given parent company. This amendment is being finalized as proposed.

The EPA is also finalizing the following amendments as proposed. We are amending 40 CFR 98.3(h)(4) to clarify the provisions for requesting an extension of the 45-day period for submission of revised reports in 40 CFR 98.3(h)(1) and (2). Finally, we are revising the definitions of ''degasification system'', ''ventilation well or shaft'', and ''ventilation system'' to more closely align with common terminology used in the coal mining industry (subpart FF).

4. Summary of Comments and Responses—Other Corrections and Amendments to Subpart A

This section summarizes the significant comments and responses related to the proposed corrections and amendments to subpart A. See the comment response document for subpart A in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart A.

*Comment:* Many commenters supported the requirement for electricity generators to report their ORIS codes, but requested clarifications or revisions to the proposal. Commenters pointed out that the definition should be revised to indicate that ORIS codes can have up to five digits, and several commenters pointed out that the proposed definition reflects that these codes are plant-level attributes while the proposed language of the reporting requirement described the codes as unit-level attributes. One commenter recommended that the rule clearly restrict the ORIS code reporting requirement to power plants which are subject to both EIA's Form 860 reporting requirements and to 40 CFR part 98. Another commenter stated that the proposal would require operators to report the same ORIS code for each unit at a single facility.

*Response:* The final amendments do not define the term ''ORIS code'' but instead define the term ''plant code'' based largely on the following definition from the Certificate of Representation (EPA Form 7610–1 (Revised 8–2011)) used for the EPA's $NO_X$ and $SO_2$ trading programs:

> A plant code is a 4 or 5 digit number assigned by the Department of Energy's (DOE) Energy Information Administration (EIA) to facilities that generate electricity. For older facilities, ''plant code'' is synonymous with ''ORISPL'' and ''Facility'' codes. If the facility generates electricity but no plant code has been assigned, or if there is uncertainty regarding what the plant code is, send an email to the EIA. The email address is *EIA-860@eia.gov*. For facilities that do not produce electricity, use the facility identifier assigned by EPA (beginning with ''88'').

Due to the recurring comment that an ORIS code is a plant-level attribute that was proposed as a unit-level reporting requirement, the final amendments clarify that the plant code should, in fact, be reported at the unit-level or configuration-level under Part 98 because of differences between EIA conventions for delineating plant-sites and the definition of ''facility'' under 40 CFR 98.6. Reporting of the plant code at the unit-level or configuration-level is necessary because some groups of combustion units that are under common control are considered to be multiple plant-sites by EIA. For example, the generating facility assigned EIA plant code 3250 is a generating plant with 12 peaking units that is adjacent to a base load plant assigned EIA plant code 3251. Because these two EIA plant-sites are adjacent and owned by the same utility company, they are considered a single ''facility'' as that term is defined in 40 CFR 98.6. While one commenter's statement that all units at a single facility would report the same ORIS code is valid for the majority of Part 98 facilities, this statement is not universally valid. The final rule clarifies these points. However, because plant codes are being treated as unit-level attributes under Part 98, the associated reporting requirements are being promulgated with other unit-level requirements under subpart C.

*Comment:* Two commenters expressed concern that the EPA would use the new provision in 40 CFR 98.3(c)(11)(vii) to assign parent companies to a given facility or supplier or make changes to a facility or supplier's certified report after it is submitted. It was also noted that the EPA did not indicate if the company naming convention would be revised for previously submitted reports or only apply to reports submitted going forward.

*Response:* The EPA notes that the proposed language ''standardized conventions for the naming of a parent company'' refers to the style guide currently referenced as a suggested template for parent company reporting in e-GGRT. This style guide covers items such as common punctuation and abbreviation use in parent company names and is included to avoid having facilities with the same parent company report that parent company in different formats (i.e. ABC Corp. vs. ABC Corporation vs. A.B.C. Corp.). The list of parent companies provided in e-GGRT provides a list of company names that are already formatted in-line with the style guide. Currently, reporters have the option to use a parent company name on the provided list or enter a separate parent company name if their parent company is not listed on the provided list. Those two options would remain in place with this change, and reporters will not be limited to only selecting a parent company from the list provided in e-GGRT. This change does require that, if a reporter does not choose a company on the list provided in e-GGRT, they must follow the style guide to ensure their parent company name is entered in a manner consistent with other reporters. Again, the style guide is limited to formatting requirements, such as punctuation and abbreviation (i.e., U.S. vs. US vs. United States).

This change does not give the EPA permission to alter the parent company information certified and submitted by reporters. If, in the process of future report verification, EPA notes that the style guide was not followed, then the EPA may ask the reporter to correct the parent company name to adhere to the format in the style guide. In this situation, the reporter would make any changes to the reported parent company name, not EPA. The EPA does not intend to require resubmission of reports for previous years solely to update the parent company name to comply with this new provision.

The conventions in the style guide are consistent with other EPA programs, such as the Toxics Release Inventory, which provides consistency for those parent companies that report under multiple programs. For the reasons and clarifying statements mentioned above, the EPA is finalizing this regulatory text change as proposed.

*Comment:* One commenter objected to EPA's proposal to revise the parent company requirements under 40 CFR

98.3(c)(11) without first completing a revised Information Collection Request (ICR).

*Response:* The regulatory text related to standardizing of parent company names does not add any new reporting requirements to subpart A. Rather, it clarifies the format used for submitting parent company names under 40 CFR 98.3(c)(11) to provide consistency for both reporters and the public viewing the data. Because this change is a formatting change for an existing requirement, the EPA has determined an ICR amendment is not required.

*B. Subpart C—General Stationary Fuel Combustion Sources*

1. Summary of Final Amendments

We are generally finalizing revisions to the requirements of 40 CFR part 98, subpart C (General Stationary Fuel Combustion Sources) as proposed. The revisions clarify the use of the Tier methodologies and update high heat value (HHV) and emission factors for several fuels. The more substantive corrections, clarifying, and other amendments to subpart C are found here. We are finalizing all of the minor corrections to subpart C presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934).

First, we are finalizing a change to 40 CFR 98.33(b)(1), as proposed, that will allow the Tier 1 methodology to be used for Table C–1 fuels that are combusted in a unit with a maximum rated heat input capacity greater than 250 million Btus per hour, if the fuel provides less than 10 percent of the annual heat input to the unit and the use of Tier 4 is not required.

As previously discussed in Section II.A.3 of this preamble, the proposed requirement for certain facilities to report their plant code(s) (as defined under 40 CFR 98.6) is being finalized as unit-level and configuration-level reporting requirements under subpart C. The final amendments require reporting of this code at the unit-level or configuration-level in the applicable methodology-specific paragraphs in subpart C (i.e., paragraphs for Tiers 1–3, Tier 4, common pipe, common stack, aggregation of units, and Part 75 reporting methodologies) in order to facilitate cross-referencing GHGRP data with other publicly available state and federal data resources. The plant code reporting requirement applies to each stationary combustion source (i.e., each individual unit and each group of units reported as a configuration) that includes at least one combustion unit that has been assigned a plant code.

We are not finalizing the proposed change to the default biogenic fraction of $CO_2$ for MSW. After consideration of public comments, the EPA performed an analysis that supports retaining the existing default MSW biogenic $CO_2$ fraction of 0.6. (See ''Analysis of Default Biogenic $CO_2$ Fraction for Municipal Solid Waste (MSW)'', June 24, 2013 in Docket Id. No. EPA–HQ–OAR–2012–0934).

We are revising Table C–1 as proposed to update the HHV and/or emission factors for several fuels. The amendments to Table C–1, as discussed in the memorandum ''Review and Evaluation of 40 CFR Part 98 $CO_2$ Emission Factors for EPW07072 To 45'' (see Docket Id. No. EPA–HQ–OAR–2012–0934), include: (1) Replacing ''Wood and Wood Residuals'' with ''Wood and Wood Residuals (dry basis),'' with a footnote containing an equation that can be used to adjust the HHV value for any moisture content; (2) replacing ''Biogas (captured methane)'' with two types of biogas: ''Landfill Gas'' and ''Other Biomass Gases;'' (3) revising the HHV and/or emission factors for liquid petroleum gases (LPG) and LPG components including propane, ethane, ethylene, isobutane, isobutylene, butane, and butylene; (4) correcting the emission factor for coke and revising the name to ''coal coke'' to differentiate it from ''petroleum coke;'' (5) updating emission factors for the four types of coal and the four types of mixed coals; (6) revising the HHV for the biomass fuel ''solid byproducts;'' and, (7) finalizing minor changes to the HHV and/or emission factors for natural gas, used oil, natural gasoline, petrochemical feedstocks, unfinished oils, crude oil, and tires.

We are revising Table C–2 to add $CH_4$ and $N_2O$ emission factors for ''fuel gas'' and ''wood and wood residuals'', as proposed.

The EPA is not finalizing the proposed addition of waste coals (waste anthracite (culm) and waste bituminous (gob)) to Table C–1, and is not finalizing the proposed FBC-specific $N_2O$ emission factors for coal and waste coal to Table C–2. As discussed in the preamble to the proposed rule, the EPA reviewed multiple studies that indicate $N_2O$ emissions from these units when burning coal and waste coal are significantly higher than from conventional combustion technologies. We received comments that included additional data, which is discussed in Section II.B.2 of this preamble. The EPA will study this data to inform any future rulemaking to address this issue.

2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to the proposed amendments to subpart C. See the comment response document for subpart C in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart C.

*Comment:* Two commenters stated that the Wojtowicz study [24] used by the EPA to develop the proposed $N_2O$ emission factors for FBCs is not relevant to the large-scale FBC systems that are subject to Part 98. These commenters also provided a field study [25] of FBC emissions conducted by R.A. Brown, et al. Because the Brown study documents $N_2O$ emission rates that are lower than the proposed emission factors, these commenters expressed concerns that the proposed $N_2O$ emission factors will over estimate emissions from FBCs, and they concluded that the underlying Wojtowicz study should not be used to develop emission estimates for large-scale FBC systems. These commenters also believe that the EPA did not include in the docket a detailed description of the methodology used to derive the $N_2O$ emission factors from the Wojtowicz study.

*Response:* The EPA appreciates the $N_2O$ emissions and operating data from the Brown study provided by the commenters. We are not finalizing the proposed FBC-specific emission factors to allow time to study the additional data provided with the comments.

*Comment:* Several commenters disagreed with the EPA's proposal to reduce the default MSW biogenic $CO_2$ fraction from 0.60 to 0.55 and requested that the EPA use the actual MSW fractions reported by all municipal waste combustors (MWCs) for the first three years of the GHGRP (2010–2012) to determine an appropriate default.

*Response:* In response to these comments, the EPA performed an analysis of all quarterly MSW biogenic $CO_2$ fractions (determined using ASTM D7459–08 and ASTM D6866–08) submitted through the GHGRP in reporting years 2010 through 2012. Quarterly MSW biogenic $CO_2$ fractions were averaged for each MWC to determine each unit's annual average MSW biogenic $CO_2$ fraction. The weighted average (based on the reported

[24] M.A. Wojtowicz, et al., *Combustion of Coal as a Source of $N_2O$ Emission,* 34 Fuel Processing Tech. 1(1993), EPA–HQ–OAR–2012–0934–0029.

[25] R.A. Brown, et al., *$N_2O$ Emissions from Fluidized Bed Combustion,* Proceedings of the 11th International Meeting on Fluidized Bed Combustion, March 1991.

unit level biogenic $CO_2$ emissions) for all MWC annual averages was determined to be 0.62. The result of this analysis supports retaining the existing default MSW biogenic $CO_2$ fraction of 0.60. (See ''Analysis of Default Biogenic $CO_2$ Fraction for Municipal Solid Waste (MSW)'', June 24, 2013 in Docket Id. No. EPA–HQ–OAR–2012–0934).

*C. Subpart H—Cement Production*

We are finalizing one revision to the reporting requirements of 40 CFR part 98, subpart H (Cement Production), as proposed. We are amending 40 CFR 98.86(a)(2) to require reporting of facility-wide cement production. This change will provide consistency in the reporting requirements for facilities using continuous emissions monitoring system (CEMS) and not using CEMS. The EPA received one comment supporting the proposed change to subpart H.

*D. Subpart K—Ferroalloy Production*

We are finalizing two corrections to subpart K of Part 98 (Ferroalloy Production) as proposed. First, we are correcting Equation K–3 to revise the numerical term ''2000/2205'' to ''2/2205''. Next, we are amending 40 CFR 98.116(e) to require the reporting of the annual process $CH_4$ emissions (in metric tons) from each electric arc furnace (EAF) used for the production of any ferroalloy listed in Table K–1 of subpart K of Part 98. These amendments are necessary for consistent reporting of $CH_4$ emissions from all ferroalloy production facilities. The EPA received no comments on the proposed changes to subpart K.

*E. Subpart L—Fluorinated Gas Production*

The EPA is amending subpart L of Part 98 (Fluorinated Gas Production) to extend temporary, less detailed reporting requirements for fluorinated gas producers for an additional year, as proposed. The extension requires the same less detailed reporting for reporting year 2013 as for reporting years 2011 and 2012. The extension allows the EPA, as well as stakeholders, to consider the various options for reporting emissions under subpart L. We are finalizing all of the minor corrections to subpart L presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934). The EPA received no comments objecting to the proposed changes to subpart L.

*F. Subpart N—Glass Production*

We are finalizing several clarifying revisions to subpart N of Part 98 (Glass Production) as proposed. The more substantive corrections, clarifying, and other amendments to subpart N are found here. We are finalizing all of the minor corrections to subpart N presented in the Table of 2013 Revisions as proposed. The EPA received no comments objecting to the proposed changes to subpart N.

We are revising 40 CFR 98.144(b) as proposed to specify that reporters determining the carbonate-based mineral mass fraction must use sampling methods that specify X-ray fluorescence.

Additionally, we are removing ASTM D6349–09 and ASTM D3682–01 from the requirements in 98.144(b) as proposed. These amendments allow reporters flexibility in choosing a sampling method (because multiple X-ray fluorescence methods are available). For measurements made in the emission reporting year 2013 or prior years, reporters continue to have the option to use ASTM D6349–09 and ASTM D3682–01. Reporters are not required to revise previously submitted annual reports. Facilities have the option, but are not required, to use the newly proposed option for the reports submitted to EPA in 2013.

*G. Subpart O—HFC–22 Production and HFC–23 Destruction*

The EPA is finalizing clarifying amendments and other corrections to subpart O (HFC–22 Production and HFC–23 Destruction) as proposed. The more substantive corrections, clarifying, and other amendments to subpart O are found in this section. We are finalizing all of the minor corrections to subpart O presented in the Table of 2013 Revisions as proposed.

We are adding a sentence to 40 CFR 98.156(c) to clarify how to report the HFC–23 concentration at the outlet of the destruction device in the event that the concentration falls below the detection limit of the measuring device. The final rule clarifies that in this situation, facilities are required to report the detection limit of the measuring device and that the concentration was below that detection limit. The EPA received no comments on the proposed changes to subpart O.

*H. Subpart P—Hydrogen Production*

1. Summary of Final Amendments

The EPA is finalizing the corrections and clarifications to subpart P as proposed. The more substantive corrections, clarifying, and other amendments to subpart P are found here. Additional minor corrections, including minor edits to the final rule, are presented in the Table of 2013 Revisions (see Docket Id. No. EPA–HQ–OAR–2012–0934). The EPA received no comments objecting to the proposed changes to subpart P.

We are finalizing 40 CFR 98.163(b), as proposed, to clarify that when the fuel and feedstock material balance approach is followed, the average carbon content and molecular weight for each month used in Equations P–1, P–2, or P–3 may be based on analyses performed annually or analyses performed more frequently than monthly (based on the requirements of 40 CFR 98.164(b)). Additionally, we are revising the term definitions in Equations P–1, P–2, and P–3 to remove references to the frequency of analyses in equation terms ''$CC_n$'' and ''$MW_n$'' in Equation P–1 and equation term ''$CC_p$'' in Equations P–2 and P–3, since the analysis frequencies are not described in the introductory text at 40 CFR 98.163(b), as discussed above.

The final amendments to subpart P include revising the equation term ''$Fdstck_n$'' in Equations P–1 and P–2 and revising the language in paragraphs 40 CFR 98.166(b)(2) and (b)(5). These changes optionally allow the gaseous or liquid feedstock quantity to be measured on a mass basis in addition to the already-specified volumetric basis. The change to the equation term ''$Fdstck_n$'' is consistent with changes made to subpart X, and allows the results from flow meters that measure gas and liquid materials on a mass basis to be used directly in Equation P–1 or P–2 without first having to perform unit conversions. All changes add flexibility for reporters, and should lead to fewer reporting errors.

We are modifying 40 CFR 98.164(b)(5) as proposed by allowing a facility to analyze fuels and feedstocks using chromatographic analysis, whether continuous or non-continuous. Additionally, we are moving recordkeeping requirements 40 CFR 98.164(c) and (d) to new paragraphs 40 CFR 98.167(c) and (d) in 40 CFR 98.167 (Records that must be retained). Finally, we are revising 40 CFR 98.166(a)(2) and (a)(3) to remove the requirement to report hydrogen and ammonia production for all units combined. These amendments are finalized as proposed. The EPA received no comments objecting to the proposed changes to subpart P.

2. Summary of Comments and Responses

See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to

subpart P. The EPA received only supportive comments for subpart P, therefore, there are no changes from proposal to the final rule based on these comments.

*I. Subpart Q—Iron and Steel Production*

1. Summary of Final Amendments

The EPA is finalizing clarifying amendments to subpart Q (Iron and Steel Production) as proposed. The more substantive corrections, clarifying, and other amendments to subpart Q are found here. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934).

We are amending the definition of the iron and steel production source category in subpart Q, 40 CFR 98.170, as proposed, to include direct reduction furnaces not co-located with an integrated iron and steel manufacturing process. We are amending Equation Q–5 in subpart Q to account for the use of gaseous fuels in EAFs. Specifically, we are modifying Equation Q–5 by adding terms to account for the amount of gaseous fuel combusted and the carbon content of the gaseous fuel. We are also amending Equation Q–5 by correcting the term ''$C_f$'' to ''$C_{flux}$'' and the term ''$C_c$'' to ''$C_{carbon}$'' to match those presented in the definitions, and to add a closing bracket at the end of the equation. These amendments are finalized as proposed.

We are revising 40 CFR 98.173(d) as proposed to clarify when the Tier 4 calculation methodology must be used to calculate and report combined stack emissions. The amendment clarifies that the Tier 4 calculation methodology should be used (and emissions reported under subpart C of Part 98) if the GHG emissions from a taconite indurating furnace, basic oxygen furnace, non-recovery coke oven battery, sinter process, EAF, decarburization vessel, or direct reduction furnace are vented through a stack equipped with a CEMS that complies with the Tier 4 methodology in subpart C of this part, or through the same stack as any combustion unit or process equipment that reports $CO_2$ emissions using a CEMS that complies with the Tier 4 Calculation Methodology in subpart C.

We are amending 40 CFR 98.174(c)(2) as proposed by removing the term ''furnace'' from the statement ''For the furnace exhaust,'' because decarburization vessels are not furnaces. We are also amending 40 CFR 98.174(c)(2) by dividing (c)(2) into two separate sub paragraphs to separately specify the sampling time for continuously charged EAFs. We are removing the term ''production cycles'' for continuous EAFs and provide owners or operators with the option of sampling for a period spanning at least three hours. These amendments are finalized as proposed.

We are amending 40 CFR 98.175(a) as proposed to clarify that 100 percent data availability is not required for process inputs and outputs that contribute less than one percent of the total mass of carbon into or out of the process. Similarly, we are finalizing the amendment to 40 CFR 98.176(e) clarifying that the reporting requirements of 40 CFR 98.176(e) do not apply to process inputs and outputs that contribute less than one percent of the total mass of carbon into or out of the process.

2. Summary of Comments and Responses

See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart Q. The EPA received only supportive comments for subpart Q, therefore, there are no changes from proposal to the final rule based on these comments.

*J. Subpart W—Petroleum and Natural Gas Systems*

The EPA is amending subpart W to incorporate minor revisions to three equations for consistency with the revisions to Table A–1 that we are finalizing in this action. The subpart W calculations for annual mass of GHG emissions for gas pneumatic device venting and natural gas driven pneumatic pump venting in $CO_2e$ are calculated using a conversion factor that was developed using the methane GWP from Table A–1. The affected equations are Equation W–1, which calculates the mass of $CO_2e$ using a conversion factor ($Conv_i$) that is developed from the methane GWP; Equation W–2, which also calculates the mass of $CO_2e$ using a conversion factor ($Conv_i$) that is developed from the methane GWP; and Equation W–36 in 40 CFR 98.233(u)(2)(v), which incorporates numeric GWPs for $CH_4$ and $N_2O$. Because the GWP values that inform the methane calculations in these three equations reference the previous GWP value, each equation needs to be amended separately to change the numeric GWP. While the EPA proposed that the new GWP apply throughout all of Part 98, the EPA did not specifically propose amendments to the regulatory text referencing the numeric GWP in these three discrete equations. In addition to finalizing the GWP value for methane in Table A–1, we are also amending the methane conversion factor and methane GWP used in these three subpart W equations to ensure the correct GWP value for methane in Table A–1 is used in these calculations.

*K. Subpart X—Petrochemical Production*

1. Summary of Final Amendments

The EPA is finalizing corrections and clarifications to subpart X. The more substantive corrections, clarifying, and other amendments to subpart X are found here. Additional minor corrections to subpart X, including changes to the final rule, are discussed in the Table of 2013 Revisions (see Docket Id. No. EPA–HQ–OAR–2012–0934).

We are finalizing several amendments to subpart X as proposed. We are revising the calculation methodology in 40 CFR 98.243(b) for $CH_4$ and $N_2O$ emissions from burning process off-gas for reporters using the CEMS method to determine $CO_2$ emissions; the revision requires reporters to use Equation C–10 of subpart C of Part 98. Reporters must use the cumulative annual heat input from combustion of the off-gas (mmBtu) and fuel gas emission factors from Table C–2 to calculate emissions of $CH_4$ and $N_2O$. We are revising 40 CFR 98.243(c)(3) and 40 CFR 98.244(b)(4) to allow subpart X reporters that use the mass balance calculation method to obtain carbon content measurements from a customer of the product. Additionally, we are revising 40 CFR 98.243(c)(4) to allow the alternative sampling requirements to be used during all times that the average monthly concentration is above 99.5 percent of a single compound for reporters using the mass balance calculation method. We are also replacing the Equation X–1 parameters ''$(MW_f)_i$'' and ''$(MW_p)_i$'' with parameters ''$(MW_f)_{i,n}$'' and ''$(MW_p)_{i,n}$'', respectively, and adding the associated equation term definitions, and revising the definitions for the terms ''$C_g$'', ''$(F_{gf})_{i,n}$'' and ''$(P_{gp})_{i,n}$'' in Equation X–1 as proposed.

We are revising the test method description for chromatographic analysis in 40 CFR 98.244(b)(4)(xiii) to remove the word ''gas''. We are also modifying 40 CFR 98.244(b)(4)(xv) to allow additional methods for the analysis of carbon black feedstock oils and carbon black products. We are revising the missing data procedures in 40 CFR 98.245 to clarify that the procedures for missing fuel carbon contents in 40 CFR 98.35(b)(1) are to be used only for missing feedstock and

product carbon contents, and the procedures for missing fuel usage in 40 CFR 98.35(b)(2) are to be used to develop substitute values for missing feedstock and product flow rates. We are also adding missing data requirements for missing flare data and for missing molecular weights for gaseous feedstocks and products. These amendments are finalized as proposed.

We are finalizing two amendments to clarify the reporting requirements of 40 CFR 98.246(a)(6) for reporters using the mass balance method. Specifically, we are amending 40 CFR 98.246(a)(6) to require reporters to report the name of each method that is used to determine carbon content or molecular weight in accordance with 40 CFR 98.244(b)(4). We are also requiring reporters to describe each type of device used to determine flow or mass (e.g., flow meter or weighing device) and identify the method used to determine flow or mass for each device in accordance with 40 CFR 98.244(b)(1) through (b)(3). We are revising 40 CFR 98.246(a)(8) to specify that reporters using the mass balance calculation method must identify combustion units outside of the petrochemical process unit that burned process off-gas. These amendments are finalized as proposed.

As proposed, we are removing the requirements in 40 CFR 98.246(b)(4) and (b)(5) to report $CO_2$, $CH_4$, and $N_2O$ emissions from each CEMS location and the requirement to report the aggregated total emissions from all CEMS locations. In 40 CFR 98.246(b)(5) we are removing the requirements to report inputs to Equation C–8. Instead of the Equation C–8 inputs, reporters will report the total annual heat input for Equation C–10, as required in 40 CFR 98.35(c)(2). Finally, we are removing the requirement to identify each stationary combustion unit that burns petrochemical process off-gas. These amendments are finalized as proposed.

The final amendments include several changes to proposed language to better reflect our intent but that do not change the underlying requirement. For example, a proposed change in 40 CFR 98.242(b)(2) specified that emissions from burning petrochemical process off-gas in any combustion unit are not to be reported under subpart C. The final amendments clarify that ''any combustion unit'' includes combustion units that are not part of the petrochemical process unit.

The final amendments to subpart X include changes to the proposed quality assurance/quality control (QA/QC) requirements for flare gas monitoring instruments. After consideration of a public comment, we are specifying in the final amendments (40 CFR 98.244(c)) that reporters using the methodology in 40 CFR 98.243(b) or (d) must be complying with all applicable QA/QC requirements in 40 CFR 98.254(b) through (e) for flare gas monitoring instruments beginning no later than January 1, 2015. The proposed amendments did not specify when reporters would be required to comply with these requirements. The final amendments also clarify that QA/QC requirements for flare gas monitoring instruments apply in the same manner as under other subparts such as subpart Y. Specifically, if a facility has installed a flare gas monitor, then specified QA/QC requirements apply to that monitor. However, if the reporter estimates a flare gas characteristic based on engineering records or other information, as allowed under 40 CFR 98.253(b)(1) through (b)(3), then the QA/QC requirements in 40 CFR 98.254(b) through (e) do not apply.

The final amendments include changes to clarify the reporting requirements in 40 CFR 98.246(a)(9) for reporters using the alternative to sampling and analysis in 40 CFR 98.243(c)(4). The proposed changes to this section addressed various reporting requirements related to off-spec production of a product. The final amendments clarify that the off-spec production reporting requirements apply only if the alternative methodology is being used for the product in question. The purpose of the off-spec reporting is to ensure that appropriate carbon content values are being used. Carbon content of a feedstock is not affected by process upsets that result in off-spec product. Thus, there is no need to report off-spec product when the alternative methodology is being used only for a feedstock. This section of subpart X also requires reporting of the dates of any process changes that reduce the composition of the primary component in the subject stream to less than 99.5 percent. According to 40 CFR 98.243(c)(4), the alternative methodology is not allowed if the ''average monthly'' concentration falls below 99.5 percent. Thus, to make the two sections consistent, the final amendments to 40 CFR 98.246(a)(9) require reporting of dates of process changes that cause the ''monthly average'' composition to fall below 99.5 percent.

The final amendments also include changes to 40 CFR 98.246(b)(4). The proposed amendments to this section required reporting of an estimate of the fraction of total $CO_2$ emissions measured by the CEMS that is ''attributable to the petrochemical process unit.'' After further consideration, we determined that the term ''attributable to'' may be ambiguous. Therefore, the final amendments clarify that the emissions to use in estimating the fraction include both $CO_2$ directly emitted by the process plus $CO_2$ generated by combustion of off-gas from the petrochemical process unit.[26] The final amendments also include several additional changes throughout subpart X to replace incorrect paragraph references as well as to fix formatting, typographical, and grammatical errors. All of these changes, as well as the changes that are described in more detail above, are presented in the Table of Revisions to this rulemaking (see Docket Id. No. EPA–HQ–OAR–2012–0934).

The EPA received two suggested revisions for subpart X that are beyond the scope of this rulemaking. These included a request to report vinyl chloride monomer production in lieu of ethylene dichloride production, and a request for alternative options for determining and reporting carbon content of small feedstock streams (streams that constitute less than 0.5% of the total feedstock flow on an annual basis). Although we are not including the suggested revisions in this final rule, the EPA is considering these comments for inclusion in a future rulemaking. See the comment response document for subpart X in Docket Id. No. EPA–HQ–OAR–2012–0934 for additional information.

2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to the proposed amendments to subpart X. See the comment response document for subpart X in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart X.

*Comment:* One commenter stated that the EPA should provide additional time for reporters to add any existing flare gas monitoring instrumentation to the GHG Monitoring Plan and into existing maintenance database systems to ensure that they are calibrated in accordance with the new QA/QC requirements in 40 CFR 98.244(c). The commenter stated that the compliance date should be no earlier than July 1, 2014.

*Response:* We agree with the commenter that some time is needed for

[26] We are finalizing confidentiality determinations for the revised data element in 40 CFR 98.246(b)(4). See Section V of this preamble for additional information.

reporters to modify their monitoring plans and maintenance systems if they are not already implementing procedures consistent with the new requirements. Although compliance could be achieved any time during a year, for reporting purposes we have set the compliance date at the beginning of a reporting year. While we considered setting the compliance date on January 1, 2014, we determined that that date would not provide sufficient time for all facilities to come into compliance with these requirements. We determined that January 1, 2015 would provide sufficient time for all facilities to come into compliance regardless of the number of flares they use or the number of monitoring instruments that they use.

*L. Subpart Y—Petroleum Refineries*

1. Summary of Final Amendments

The EPA is finalizing changes, technical corrections, and clarifying amendments to subpart Y (Petroleum Refineries) as proposed. The more substantive corrections, clarifying, and other amendments to subpart Y are found here. Additional minor corrections, including changes to the final rule, are presented in the Table of 2013 Revisions (see Docket Id. No. EPA–HQ–OAR–2012–0934).

As proposed, we are revising in 40 CFR 98.252(a) the reference to the default emission factors for ''Petroleum (All fuel types in Table C–1)'' to ''Fuel Gas'' and in 40 CFR 98.253(b)(2) and (b)(3) from ''Petroleum Products'' to ''Fuel Gas'' for calculation of $CH_4$ and $N_2O$ from combustion of fuel gas.

We are revising 40 CFR 98.253(f)(2), (f)(3), and (f)(4) and the terms ''$F_{SG}$'' and ''$MF_c$'' in Equation Y–12 as proposed to clarify the calculation methods for sulfur recovery plants to address both on-site and off-site sulfur recovery plants. We are also revising the reporting requirements in 40 CFR 98.256(h) as proposed in order to clarify the reporting requirements for on-site and off-site units.

As proposed, we are clarifying 40 CFR 98.253(j) regarding when Equation Y–19 must be used for calculation of $CH_4$ and $CO_2$ emissions. The change clarifies that Equation Y–19 must be used to calculate $CH_4$ emissions if the reporter elected to use the method in 40 CFR 98.253(i)(1), and may be used to calculate $CO_2$ and/or $CH_4$ emissions, as applicable, if the reporter elects this method as an alternative to the methods in paragraphs (f), (h), or (k) of 40 CFR 98.253. We are also clarifying reporting requirements to 40 CFR 98.256(j) and (k) as proposed to specify that when Equation Y–19 is used for asphalt blowing operations or delayed coking units, the facility must report the relevant information required under 40 CFR 98.256(l)(5) rather than all of the reporting elements in 40 CFR 98.256(l).

2. Summary of Comments and Responses

See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart Y. The EPA did not receive any significant comments on this subpart and there are no changes from proposal to the final rule based on these comments.

*M. Subpart Z—Phosphoric Acid Production*

1. Summary of Final Amendments

The EPA is finalizing the amendments to subpart Z (Phosphoric Acid Production) as proposed. The more substantive corrections, clarifying, and other amendments to subpart Z of Part 98 are discussed in this section. Additional minor corrections are discussed in the Table of 2013 Revisions (see Docket Id. No. EPA–HQ–OAR–2012–0934). We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed. The EPA received one comment requesting clarification on the proposed changes to subpart Z. See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart Z.

We are amending 40 CFR 98.263(b)(1)(ii) and the description of ''$CO_{2n,i}$'' as proposed to indicate that the sampling method provides $CO_2$ content, and not emissions. We are also revising 40 CFR 98.266(b) as proposed to require that the annual report must include the annual phosphoric acid production capacity (tons), rather than the annual permitted phosphoric acid production capacity. Finally, we are amending 40 CFR 98.266 as proposed to add a requirement to report the number of times missing data procedures were used to estimate the $CO_2$ content of the phosphate rock.

2. Summary of Comments and Responses

See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart Z. The EPA did not receive any significant comments for this subpart, therefore, there are no changes from proposal to the final rule based on these comments.

*N. Subpart AA—Pulp and Paper Manufacturing*

1. Summary of Final Amendments

The EPA is finalizing the corrections and clarifications to subpart AA as proposed and is removing the subpart AA requirement to report paper production in response to public comments. The more substantive corrections, clarifying, and other amendments to subpart AA of Part 98 are discussed in this section. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions.

As proposed, we are amending 40 CFR 98.276(k) to clarify the EPA's intent regarding the annual pulp and/or paper production information that must be reported. In the final amendments, we are eliminating the requirement to report paper production and further clarifying that the pulp production total to be reported under subpart AA includes only virgin chemical pulp produced onsite.

We are revising Tables AA–1 and AA–2 as proposed to include the $CH_4$ and $N_2O$ emission factors for each individual fuel and adding kraft lime kiln $N_2O$ factors.

We are also revising Table AA–2 to (1) Amend the title to remove the reference to fossil fuel since the table also includes a biomass fuel (i.e., biogas); (2) specify that the emission factors for residual and distillate oil apply for any type of residual (no. 5 or 6) or distillate (no. 1, 2 or 4) fuel oil; and (3) add a row to specify that the Table C–2 emission factor for $CH_4$ and the Table C–2 emission factors for $CH_4$ and $N_2O$ may be used, respectively, for lime kilns and calciners combusting fuels (e.g., propane, used oil, and lubricants) that are not listed in Table AA–2.

The EPA received one comment suggesting a revision to subpart AA that is beyond the scope of this rulemaking. Specifically, the commenter requested revisions to the missing data reporting requirements for spent liquor solids in 40 CFR 98.275. Although we are not including the suggested revisions in this final rule, the EPA is considering these comments for inclusion in a future rulemaking. See the comment response document for subpart AA in Docket Id. No. EPA–HQ–OAR–2012–0934 for additional information.

2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to the proposed amendments to subpart AA. See the comment response document for subpart AA in Docket Id.

No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart AA.

*Comment:* A commenter requested clarification regarding inclusion of non-chemical pulp (e.g., mechanical pulp) in the pulp production total to be reported. The commenter also requested that paper production be eliminated from the subpart AA reporting requirements because paper production does not relate to GHG emissions generated in the pulp mill and reported under subpart AA.

*Response:* In the final amendments we are clarifying that the pulp production total to be reported is the total air-dried, unbleached virgin *chemical* pulp produced onsite during the reporting year and that mechanical pulp does not need to be included in the total. Greenhouse gas emissions reported under subpart AA depend on the amount of pulp produced using chemical (e.g., kraft, soda, sulfite, and semichemical) pulping processes. Emissions associated with onsite energy generation for mechanical pulping are reported under subpart C of Part 98 (Stationary Combustion). Reporting the total annual production of air-dried unbleached virgin chemical pulp provides a common pulp reporting basis regardless of production processes (e.g., bleaching, secondary fiber pulping, and paper making) that happen downstream of the virgin chemical pulping process where the subpart AA GHG emissions are generated.

Mills with positive subpart AA emissions should always report a positive virgin chemical pulp production value. In the final amendments we removed the proposed requirement to report a positive (non-zero) value for pulp production because some mills may wish to report zero pulp production in conjunction with zero subpart AA emissions in years when they do not produce any virgin chemical pulp.

We also examined the correlation between paper production and subpart AA emissions and agree that additional information would need to be collected for GHG emissions to be meaningfully normalized based on paper production. The tonnage of paper produced does not necessarily relate to the subpart AA GHG emissions generated in the chemical pulp mill. Paper is often produced using combinations of chemical pulp, non-chemical pulp, and secondary (recycled) fiber that may be either purchased or produced onsite, along with clay fillers, on-machine coatings, and other additives that contribute to the metric tons of paper produced. Bleaching processes that occur between the pulp and paper production areas of integrated pulp mills result in a slight loss of virgin pulp tonnage, further reducing the correlation between chemical pulp mill emissions reported under subpart AA and paper production. Furthermore, the paper production data reported under subpart AA provides an incomplete picture of GHG emissions normalized per metric ton of paper produced because reporting of paper production is not required under Part 98 for mills that do not report under subpart AA, such as mechanical pulp mills and mills that manufacture paper from purchased pulp (e.g., paper-only mills that report under subpart C). For these reasons, we have eliminated reporting of paper production from subpart AA in the final amendments. The EPA may consider at a later date whether it is necessary to propose new reporting requirements under Part 98 that would allow for a refined normalization of GHG emissions per ton of paper produced for all types of pulp and paper mills.

### *O. Subpart BB—Silicon Carbide Production*

We are finalizing several revisions to subpart BB of Part 98 (Silicon Carbide Production) as proposed. The more substantive corrections, clarifying, and other amendments to subpart BB of Part 98 are discussed in this section. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed.

We are revising 40 CFR 98.282(a) to remove the requirement for silicon carbide production facilities to report $CH_4$ emissions from silicon carbide process units or furnaces. We are removing 40 CFR 98.283(d) to remove the $CH_4$ calculation methodology. As discussed in the preamble to the proposed amendments (78 FR 19802, April 2, 2013), the EPA has determined that the requirement to report $CH_4$ emissions is not necessary to understand the emissions profile of the industry.

Reporters must continue to monitor and report $CO_2$ emissions from silicon carbide process units and production furnaces. We are revising 40 CFR 98.283 so that $CO_2$ emissions are to be calculated and reported for all process units and furnaces combined. The final rule revises 40 CFR 98.283 for consistency with the reporting requirements of 40 CFR 98.286. These amendments are finalized as proposed. The EPA received no comments on the proposed changes.

### *P. Subpart DD—Electrical Transmission and Distribution Equipment Use*

We are finalizing two substantive corrections to subpart DD (Electrical Transmission and Distribution Equipment Use) as proposed. We are revising 40 CFR 98.304(c)(1) and (c)(2) to correct the accuracy and precision requirements for weighing cylinders from ''2 pounds of the scale's capacity'' to ''2 pounds of true weight''. The EPA received no comments objecting to the proposed changes.

### *Q. Subpart FF—Underground Coal Mines*

We are finalizing multiple amendments to subpart FF of Part 98 (Underground Coal Mines) as proposed. The final amendments clarify certain provisions and equation terms, harmonize reporting requirements, and improve verification of annual GHG reports. The more substantive corrections, clarifying, and other amendments to subpart FF of Part 98 are discussed in this section. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed.

We are revising the terminology in subpart FF provisions in 40 CFR 98.320(b), 40 CFR 98.322(b) and (d), 40 CFR 98.323(c), 40 CFR 98.324(b) and (c), and 40 CFR 98.326(r) as proposed to adopt terminology that more accurately reflects industry operation. Specifically, for ventilation systems, we have replaced the terminology ''wells'' with ''ventilation system shafts'' or ''vent holes'', and for degasification systems, we have replaced the terminology ''shafts'' with ''gob gas vent holes''. We have also revised the term ''flaring'' to clarify that mine ventilation air is destroyed using a ventilation air methane (VAM) oxidizer.

We are revising the reporting requirements of subpart FF as proposed to include additional data elements that will allow the EPA to verify the data submitted, perform a year to year comparison of the data, and assess the reasonableness of the data reported. The additional data elements are included in revised 40 CFR 98.326(h), (i), (j), (o), (r), and new requirement (t) include: The moisture correction factor used in the emissions equations, units of measure for the volumetric flow rates reported, method of determining the gas composition, the start date and close date of each well, shaft, or vent hole, and the number of days the well, shaft, or vent hole was in operation during the reporting year. We are also adding a requirement (40 CFR 98.326(t)) for a reporting mine to provide the

identification number assigned to it by the Mine Safety and Health Administration (MSHA). The reporting requirements have also been updated to harmonize with changes to the calculation methods as itemized in the Table of 2013 Revisions (see Docket Id. No. EPA–HQ–2012–0934). These amendments are finalized as proposed.[27]

The EPA received no comments to the proposed changes. However, one reporting requirement that was proposed to be added as 40 CFR 98.326(t), the amount of $CH_4$ routed to each destruction device, was subsequently discovered to be redundant with information already collected under the rule, namely, 40 CFR 98.326(c) quarterly $CH_4$ destruction at each ventilation and degasification system destruction device or point of offsite transport. Therefore, the proposed requirement is no longer being added. Additionally, the new reporting requirement to provide the identification number assigned by MSHA is now numbered as 40 CFR 98.326(t), instead of 40 CFR 98.326(u) as it was proposed.

*R. Subpart HH—Municipal Solid Waste Landfills*

1. Summary of Final Amendments

We are finalizing several amendments to 40 CFR Part 98, subpart HH (Municipal Solid Waste Landfills) to clarify equations and amend monitoring requirements to reduce burden for reporters, where appropriate. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934). We are finalizing amendments to the definition of the DOC term (degradable organic carbon) for Equation HH–1, as proposed, to indicate that the DOC values for a waste type must be selected from Table HH–1. We are also finalizing amendments, as proposed, to the definition of the term ''F'' in Equation HH–1 (fraction by volume of $CH_4$ in the landfill gas) to specify that this term must be corrected to zero percent (0%) oxygen and finalizing amendments to the monitoring requirements at 40 CFR 98.344(e) to specify how to correct this term to zero percent (0%) oxygen.

We are finalizing amendments, as proposed, to change the minimum $CH_4$ concentration monitoring frequency in recovered landfill gas from weekly to monthly. We are retaining the requirement, as proposed, to have 14 days between monthly sampling events if only one sample is collected per calendar month.

We are finalizing revisions to the definition of oxidation fraction in Equations HH–5, HH–6, HH–7, and HH–8 of subpart HH to refer to the oxidation fractions in Table HH–4 (although, as discussed below, we are revising Table HH–4 based on comments received). We are finalizing revisions to Equations HH–6, HH–7, and HH–8 to generalize these equations in the event that the landfill contains multiple landfill gas collection system measurement locations and/or multiple destruction devices. While we are finalizing amendments to nearly all of the terms for Equations HH–6, HH–7, and HH–8 as proposed, we are further revising the proposed definition $f_{Dest,n}$ in Equations HH–6 and HH–8 to delete the phrase ''. . . is destroyed in a back-up flare (or similar device) or if the gas . . .'' Since the revised equations explicitly consider on-site back-up control devices, it is no longer necessary to assume $f_{Dest} = 1$ when a back-up flare is used. We are also finalizing proposed revisions to the reporting requirements associated with $f_{Dest,n}$ in 40 CFR 98.346(i)(5). As proposed, we are finalizing amendments to generalize the reporting requirements for each measurement location. Additionally, based on the revisions to $f_{Dest,n}$ outlined above, we are replacing requirements to report operating hours for the ''primary'' and ''back-up'' destruction device and a single value of destruction efficiency with requirements to report the number of destruction devices and the operating hours and destruction efficiency for each device associated with a given measurement location. We are also finalizing amendments to 40 CFR 98.346(i)(6) and 40 CFR 98.346(i)(7) to clarify that methane recovery calculated using Equation HH–4 is to be reported separately for each measurement location.[28] We are finalizing amendments as proposed to revise ''in reporting years'' to ''in the reporting year'' in the first sentence in 40 CFR 98.345(c). We are also finalizing, as proposed, amendments to move the reporting elements pertaining to the methane correction factor (MCF) from paragraph (d)(1) to paragraph (e).

We are finalizing numerous revisions to the proposed oxidation fractions in Table HH–4. First, we are specifying that the oxidation fractions based on methane flux are only applicable for the 2013 reporting year and subsequent reporting years and that an oxidation fraction of 0.10 must be used for reporting years prior to 2013. We are also specifying that, for the 2013 reporting year and subsequent reporting years, owners or operators of landfills that do not have a soil cover of at least twenty-four inches in depth for a majority of the landfill area containing waste must use an oxidation fraction of 0.10 and owners or operators of landfills that have a geomembrane cover with less than 12 inches of soil must use an oxidation fraction of 0.0. We are allowing owners or operators of landfills to use the default oxidation fraction of 0.10 (except for geomembane covers with less than 12 inches of soil) without determining their methane flux rate in lieu of the new oxidation fractions based on methane flux rates. This limits any additional burden associated with determining the methane flux rates to only those owners or operators of landfills that elect to use the new methane flux-dependent oxidation fractions.

While we are finalizing the methane flux-dependent oxidation fraction values as proposed, we are limiting to some extent, considering the public comments received, the landfills that can use these new methane flux-dependent oxidation fractions to those that have cover soils of 24 inches or more over a majority of the landfill area containing waste. Nearly all of the data upon which the new methane flux-dependent oxidation fractions were based were for landfills with soil covers over 30 inches in depth, so it is reasonable to limit the use of the new methane flux-dependent oxidation fractions to landfills with similar soil cover systems.

We are revising the definition of the term $G_{CH4}$ (modeled methane generation rate) in the footnote to Table HH–4 to indicate that the modeled methane generation rate is determined from Equation HH–1 of subpart HH or Equation TT–1 of subpart TT, as applicable, because Table HH–4 is referenced in subpart TT and owners or operators of industrial waste landfills must use Equation TT–1 rather than Equation HH–1 to determine the modeled methane generation rate.

We are making one revision to subpart HH based on comments received on the expansion of applicability that will occur in the MSW Landfill sector due to the revision of the GWP for methane to the IPCC AR4 value. Specifically, we are providing a very limited exclusion within 40 CFR 98.340 for certain closed landfills that have not previously had to

[27] We are finalizing confidentiality determinations for the new and significantly revised data elements in 40 CFR 98.326. See Section V of this preamble for additional information.

[28] We are finalizing confidentiality determinations for the revised data elements in 40 CFR 98.346(i)(5), (i)(6), and (i)(7). See Section IV.A of this preamble for additional information.

report under subpart HH, but would newly be required to report starting in reporting year 2014 because the amended methane GWP causes them to exceed the 25,000 metric tons $CO_2e$ emissions threshold for the first time. We have added this exclusion to reduce the burden for these closed landfills, who would otherwise be required to estimate historical waste quantities and develop their first annual report. See Section II.R.2 of this preamble for additional information.

Finally, the EPA received one comment on subpart HH on the need to revisit the k-value decay rates used in the first order decay model for wet landfills, although we did not propose to revise these values. Although we are not including the suggested revisions in this final rule, the EPA may consider these comments for inclusion in a future rulemaking. See the comment response document for subpart HH in Docket Id. No. EPA–HQ–OAR–2012–0934 for additional information.

2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to the proposed amendments to subpart HH. See the comment response document for subpart HH in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart HH.

*Comment:* Several commenters noted that the proposed revised definition of $f_{Dest,n}$ for Equations HH–6 and HH–8 includes a special provision when gas is destroyed in a ''back-up flare (or similar device).'' The commenters stated that this distinction is an artifact of the original rule and is no longer necessary because the proposed revisions to HH–6 and HH–8 properly account for multiple control devices regardless of the amount of time any given control device operates during the year, or whether it is considered a primary or backup device. Therefore, the commenters recommended deleting the phase ''is destroyed in a back-up flare (or similar device) or if the gas'' from the definition of $f_{Dest,n}$.

*Response:* We agree with the commenters. Because Equations HH–6 and HH–8 have been generalized to directly account for on-site back-up destruction devices, the default of 1 is no longer necessary in the definition of $f_{Dest,n}$ for these devices. The phrase requested to be deleted has been removed from the definition of $f_{Dest,n}$ in today's final rule. In addition, we found that the reporting requirements in 40 CFR 98.346(i)(5) still had reporting requirements for ''back-up'' destruction devices. We proposed to revise this paragraph to require reporting for each measurement location, but considering the public comments and the revised definition for $f_{Dest,n}$ in these final amendments, we also find that the reporting requirements in 40 CFR 98.346(i)(5) for ''back-up destruction devices'' is confusing and obsolete. Therefore, based on our proposed revisions to Equations HH–6 and HH–8 and our proposed revisions to 40 CFR 98.346(i)(5), considering these public comments, we are finalizing the reporting requirements related to $f_{Dest,n}$ in the today's final rule as follows: ''If destruction occurs at the landfill facility, also report for each measurement location the number of destruction devices associated with that measurement location and the annual operating hours and the destruction efficiency (percent) for each destruction device associated with that measurement location.''

In our review of the reporting requirements corresponding to the revisions to Equations HH–6 and HH–8 in response to these comments, we also found that, when there are multiple methane recovery measurement locations, the methane recovery should be reported for each measurement location. We consider that 40 CFR 98.343(b)(1) and (2) require use of Equation HH–4 separately for each monitoring location (e.g., 40 CFR 98.343(b)(1) requires owners or operators of MSW landfills that have continuous monitoring systems to ''. . . use this monitoring system and calculate the quantity of $CH_4$ recovered for destruction using Equation HH–4 of this section.''). It is also clear that the methane recovery and the fraction of hours the recovery system operated needs to be determined separately for each measurement location as these are separate inputs for Equations HH–6 and HH–8, as amended, when multiple measurement locations are used. For e-GGRT to perform the necessary calculations and to support verification of reported methane generation and emissions, the measurement location-specific recovery values need to be reported. Therefore, based on our review of the reporting requirements corresponding to the revisions to Equations HH–6 and HH8 in response to these comments, we are also finalizing amendments to 40 CFR 98.346(i)(6) to specify that the annual quantity of recovered $CH_4$ calculated using Equation HH–4 must be reported for each measurement location and to 40 CFR 98.346(i)(7) to specify that the annual operating hours of the gas collection system must be reported for each measurement location.

*Comment:* Several commenters expressed support of the revisions to allow methane concentration measurements to be performed monthly rather than weekly; however, these commenters objected to the inclusion of the 14 day interval between monthly samples (if only one sample is collected per calendar month). The commenters stated that the EPA's analysis of three years of data provided for 395 landfills showed that there is very little variability in methane concentration across either weekly or monthly measurements. Some of the commenters also stated that qualified personnel properly trained in instrument calibration, sample measurement, and documentation procedures must be used to collect the readings for QA purposes and the 14 day limitation significantly and unnecessarily complicates scheduling of required personnel. Finally, a commenter argued that, for destruction devices that operate only intermittently (a common occurrence), it may not be possible to take a monthly reading at least fourteen days apart due to the operating schedule of the device. For example, if a device only operates for several days at the end of one month and the beginning of the next month, it would be impossible to acquire a reading for each month at least 14 days apart. For these reasons, the commenters suggested that the proposed 14 day interval between monthly samples be deleted from the rule.

*Response:* As described in the memo ''Review of Weekly Landfill Gas Volumetric Flow and Methane Concentration'' (dated October 18, 2012 in Docket Id. No. EPA–HQ–OAR–2012–0934), our analysis concluded there was an increase in the uncertainty of the annual methane recovery estimate if the sampling frequency was reduced from weekly to monthly, but that the increase in the uncertainty was acceptable given the significant reduction in sampling and analysis costs. In our analysis, we used monthly data readings that were a minimum of four weeks apart. That is, the monthly analysis assumed the measurement readings were taken at discrete monthly intervals. If no intervening interval is included, one could collect one sample near midnight on the last day of the month and a second sample just after midnight (i.e., the morning on the first day of the month), which would effectively be equivalent to monitoring bi-monthly. Further analysis of the same set of landfill data suggests the deletion of a minimum interval between monthly samples further increases the

uncertainty of the resulting recovery estimates without reducing costs for the landfill owner or operator (See ''Uncertainty of Monthly Landfill Gas Methane Concentration Measurements,'' June 7, 2013 in Docket Id. No. EPA–HQ–OAR–2012–0934). Thus, while the variability in the methane composition may be limited, it is still somewhat variable and reducing the sampling frequency will increase the uncertainty of the methane recovery values. Without a significant corresponding reduction in burden, this increase in uncertainty cannot be justified.

It is not clear how reducing the monitoring frequency to monthly with a minimum of a 14 day interval would be onerous for scheduling purposes given that the previous requirement was weekly monitoring with a minimum of 3 days between samples (note: the existing rule has a similar minimum 3 day interval between weekly samples). Based on the weekly data provided by the landfill representatives, it appears that most landfills were able to collect weekly measurement data and most recovery systems operated continuously. The weekly data also suggest that there are very few instances (one landfill, for two month interval) where calendar month sampling could be accomplished only during the last week of one month and the first week of this month. Based on the weekly monitoring data, there does not appear to be any issue with collecting monthly samples at least 14 days apart.

We note that, like the previous weekly monitoring requirement, there are missing data procedures for assessing the composition of the landfill gas if no sample could be collected during the calendar month. We do note that there were some landfills that did not operate their collection system for an entire month. In this case, the methane concentration is not a critical parameter since any concentration times zero flow equals zero methane recovery.

Because the fourteen day period between monthly measurements limits the uncertainty of the methane recovery value and with no real increase in the cost of compliance, we are finalizing this requirement as proposed.

*Comment:* Several commenters supported the proposed provisions to determine oxidation fractions on a site-specific basis based on the methane flux rate. However, a few commenters indicated that the proposed higher oxidation fractions would result in erroneously low methane emissions. While many of the arguments regarding under-predicting methane emissions focused on factors other than the oxidation fraction (i.e., the methane recovery factors and the decay rate constants, which were not issues opened in the proposed amendments), two commenters noted that oxidation only occurs in landfill covers that are comprised of soil with the necessary depth, porosity, temperature and microbial population to effect oxidation. These commenters noted that landfills with composite or geomembrane covers that do not have a soil cover or a sufficient soil cover will not have any surface oxidation. One commenter indicated that the tests upon which the revised factors are based were conducted primarily on systems with landfill gas collection systems and well-engineered cover systems so the data were not representative of typical landfills.

One commenter noted that, in order to streamline the calculations and to use a consistent basis from year to year, the EPA should allow the reporter an option to continue to use an oxidation factor of 0.1.

*Response:* We appreciate the support of commenters that agreed with the proposed provisions to determine oxidation fractions on a site-specific basis based on the methane flux rate. We agree that the site-specific oxidation fraction should improve the methane emission estimates for facilities with low methane flux rates and sufficient soil cover to effect oxidation. However, we also agree with the commenters who noted that oxidation must be predicated on the presence of sufficient soil cover. We reviewed the available data upon which the proposed oxidation fractions were based. Nearly all of the recent tests were conducted using distinct location measurement techniques (surface air, chamber or soil probe measurements) and all measurements were made in areas that had a soil cover system of 30 inches or more. While we would have preferred to have more ''full-plume'' tests, which would better characterize the oxidation fraction over the entire landfill area, the surface and flux chamber measurements are not biased provided the surface locations are randomly selected and a sufficient number of measurements are made. We expect that most landfills will have intermediate or final soil covers over most of the areas of the landfill that contain waste, so these tests are generally applicable to most landfills. However, Table HH–4, as proposed, contained no restrictions on the use of the new methane flux-dependent oxidation fractions so it is conceivable that landfills that predominately have a daily soil cover could use these oxidation fractions that were developed for landfills with a much deeper cover soil layer. Therefore, we have revised Table HH–4 to limit the applicability of the new methane flux-dependent oxidation fractions to owners or operators of landfills that have a soil cover of at least 24 inches in depth for a majority of the landfill containing waste. We are also adding a new oxidation fraction for landfills that have a geomembrane cover and less than 12 inches of cover soil. Starting with the 2013 reporting year, these landfills must use an oxidation fraction of zero.

We agree that the oxidation study data are heavily weighted to landfills with gas collection systems, which is why we do not support the average oxidation fractions by soil type presented in the summary table of the SWICS addendum. We note that all but one of the average oxidation fractions by soil type presented in the summary table of the SWICS addendum are greater than the 0.35 oxidation fraction proposed for landfills with ''low flux rates'' and all of them are higher than the 0.25 oxidation fraction proposed for landfills with ''medium flux rates.'' By grouping the oxidation data into bins based on the methane flux rate (prior to any oxidation), we avoid the obvious bias in the average oxidation fractions as recommended in the SWICS addendum caused by the preponderance of studies conducted at landfills with gas collection systems. Although there are fewer measurements in the high methane flux range (i.e., greater the 70 grams methane per square meter per day) as compared to number of measurements in the other methane flux bins, there are a sufficient number of test runs in each bin to adequately characterize the average oxidation fraction for each bin. Therefore, we maintain that the oxidation fractions grouped into bins by methane flux rates provides the most accurate and unbiased means of estimating oxidation fractions for landfills based on the available data.

Finally, we agree that for many landfills that do not have gas collection systems, the new oxidation fractions based on methane flux rates is not likely to significantly alter their predicted methane emissions compared to using the general oxidation fraction default of 0.10. Therefore, we also include in Table HH–4 the option for any landfill owner of operator, except those of landfills with geomembrane covers with little cover soil, to simply use the default oxidation fraction of 0.10 without the need to calculate methane flux rates.

*Comment:* One commenter requested that the EPA clarify in the final rule that the proposed revised oxidation factor

approach for calculating $CH_4$ emissions be used for reporting years 2013 and forward, and not require facilities to revise emissions data from reporting years 2010–2012. Such retroactive revisions would be time-consuming and expensive while resulting in minimal changes to reported emissions.

*Response:* As indicated in our response to similar comments on the general reporting requirements in Section III.B of this preamble, these final amendments do not require facility owners or operators to resubmit previous annual reports. In the case of the oxidation factor, this value only impacts the emissions for the current reporting year and subsequent reporting years. Landfill owners or operators will not be required to determine methane fluxes for previous annual reports and revise those reports if a different oxidation factor applies. We have revised Table HH–4 to clarify that an oxidation factor of 0.1 must be used for reports prior to the 2013 reporting year and that the new oxidation factors can only be used starting with the 2013 and later reporting years.

*Comment:* One commenter noted that an expansion of applicability that will occur in the MSW Landfill sector due to the revision of the GWP for methane that would not occur in certain other sectors (e.g., subpart FF: Underground Coal Mines, subpart NN: Natural Gas) because those sectors' applicability threshold is not based on $CO_2e$ emissions. The commenter described requiring reporting from more very small landfills and requiring other very small closed landfills to continue reporting as costly and of limited policy relevance. The commenter further noted that the applicability determination for MSW Landfills is already based on the methane generation level, which was converted to tons $CO_2e$ so that emissions of $CO_2$ from stationary combustion sources are not considered in determining applicability under the rule.

Given the increased cost and limited utility of these ''side effects'' of revising the GWPs, the commenter recommended that the EPA establish both a methane-based reporting threshold for subpart HH to replace the $CO_2e$ based reporting threshold and a methane-based requirement for exiting the program. The commenter stated that changes are easily implemented by simply establishing a methane reporting threshold of 1190 metric tons/year or more and by adding new language to clarify off-ramp provisions for both the five-year exit threshold (1190 metric tons $CH_4$) and the three-year exit threshold (714 tons metric tons $CH_4$).

The commenter noted that subpart HH facilities would still calculate and report methane as well as $CO_2e$ emissions for EPA inventory purposes but rule applicability and program exit provisions would be based upon methane emissions, not $CO_2e$. According to the commenter, the proposed exit provisions do not consider ancillary subpart C anthropogenic emissions because MSW Landfills that meet the exit provisions are very small and primarily closed landfills, and they do not operate subpart C devices. The commenter described subpart C emissions as either non-existent or at such negligible amount that including these emissions would not prevent a subpart HH facility from exiting the program. Therefore, according to the commenter, subpart HH reporters would not exit the program prematurely due to exclusion of subpart C anthropogenic emissions.

According to the commenter, a methane based reporting threshold would allow the Agency to avoid increasing the reporting program burden for the MSW landfill sector and the EPA staff. It would also prevent subjecting additional small and primarily closed landfills with negligible emissions to reporting requirements and new compliance costs. Existing reporters would not be delayed five additional years or more from exiting the reporting program. It also, according to the commenter, would allow the EPA to meet national and global inventory program commitments without needlessly affecting GHG MRR applicability.

*Response:* As a programmatic issue, we have determined that the 25,000 tons $CO_2e$ reporting threshold is a reasonable reporting threshold. Because MSW landfills are primarily a methane emissions source and the size of the landfill is expected to be correlated with its methane generation, we did establish applicability based on methane generation as calculated using the methods specified in subpart HH. However, the threshold value for reporting has always been the $CO_2e$ of that methane generation at a value of 25,000 metric tons $CO_2e$, which is consistent with most other subparts in Part 98.

As noted in the preamble to the proposed rule, the revised GWP for methane more accurately reflects the estimated radiative forcing effects of methane emissions. We also noted in the preamble to the proposed rule that revisions to the GWP values would cause a number of facilities to have to newly report under subpart W: Petroleum and Natural Gas Systems, subpart II: Industrial Wastewater Treatment, and subpart TT: Industrial Waste Landfills, in addition to subpart HH. We specifically estimated the number of new reporters by subpart, the additional costs incurred for all new reporters in each subpart, and the additional emissions reported under the GHGRP for each subpart. Based on the cost estimates provided in the preamble to the proposed rule, the costs per ton of newly reported $CO_2e$ for MSW landfills were among the lowest of any of the subparts projected to have an increase in the number of reporters due to the revisions to GWP values in Table A–1. Therefore, we do not agree that the revision to the GWP for methane unduly burdens owner or operators of MSW landfills in general.

We project most of the new reporters to be open landfills that reach the reporting threshold a year or two earlier than they would otherwise (without the revision in GWP values). We see no need to alter the reporting threshold for these open landfills. Emissions from open landfills generally increase every year, so the change in the GWP of methane may cause them to report one year earlier, but that is a small incremental burden over the facility's expected annual reports over the following years. We see advantages to open landfills reporting into the program earlier based on the revised GWP for both nationwide inventory purposes and policy matters. Therefore, we are not providing a blanket applicability change in terms of methane generation.

We also do not find merit in the argument that the terms of the off-ramp provisions should be changed to methane emissions. Besides neglecting the stationary combustion source $CO_2$ emissions, which may, as the commenter noted, be small, we find that the ''additional years of reporting'' do not constitute a significant increase in burden. Landfills on the off-ramp provisions are expected to have no real monitoring requirements under subpart HH since waste is no longer received at the landfill and the gas collection system (if once present) will generally not be operated given the declining methane generation. Consequently, all of the data they would need to determine their subpart HH emissions will already be in the e-GGRT system. The e-GGRT system will automatically carry forward the historical waste disposal records and perform the necessary calculations. The landfill owner or operator will only need to review, verify, and submit the report. While the landfill may have to submit

a few additional annual reports, the additional burden incurred is minimal.

On the other hand, there may be a limited number of small, older, closed landfills that have not previously had to report under subpart HH that would be required to newly report in 2014 by exceeding the 25,000 metric tons $CO_2e$ emissions threshold for the first time solely due to the increase in the GWP of methane. We expect very few small, older, closed landfills would have the specific characteristics to have to newly report solely due to the increase in the GWP of methane; however, for these closed landfills, it would be a substantial additional burden to estimate historical waste quantities and develop their first annual report. As these landfills are closed, they no longer have a source of revenue from waste disposal fees, and the burden of reporting would be greater for them than for reporters with active revenue. Furthermore, these closed landfills will have declining emissions in all future years since they are no longer receiving waste and additional methane is not being produced. The first consequence of these declining emissions is that these reporters would provide data for only a few years until they can exit the program because their emissions are below threshold levels for the required period of time. The second consequence is that it is extremely unlikely that the information collected from these closed landfills would be useful when considering future policy options. The minor incremental improvement to overall emission totals for this sector does not warrant the disproportionate burden that would imposed on these older, small, closed facilities for information that is not useful for policy purposes. Consequently, we consider it reasonable to provide a very limited exclusion within subpart HH to reduce the burden for these specific older, small, closed landfills. Specifically, we are finalizing an amendment to 40 CFR 98.340 to modify paragraph (a) to specify that the source category does not include MSW landfills that have not received waste on or after January 1, 2013, and that had $CH_4$ generation, as determined using both Equation HH–5 and Equation HH–7 of this subpart, of less than 1,190 metric tons of $CH_4$ in the 2013 reporting year, and that were not required to submit an annual report under any requirement of Part 98 in the reporting years prior to 2013.

In conclusion, we maintain that the revised GWP values in Table A–1 of Subpart A more accurately reflect the climate impacts of methane emissions and that the existing applicability threshold for MSW landfills in subpart A in terms of $CO_2e$ emissions is reasonable. We have adequately considered the impacts of the revisions of the GWP of methane on MSW landfills (as well as other subparts in Part 98) and have concluded that these impacts are reasonable. However, we are providing a specific exclusion for certain small, older, closed MSW landfills that did not previously have to report to eliminate the impacts of the revisions to the GWP of methane for these landfills. Finally, we are not making any revisions to off-ramp provisions for subpart HH as requested by the commenter.

*S. Subpart LL—Suppliers of Coal-based Liquid Fuels*

We are finalizing multiple revisions to 40 CFR part 98, subpart LL (Suppliers of Coal-based Liquid Fuels). This section includes the more substantive corrections, clarifying, and other amendments to subpart LL. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934).

As proposed, we are removing the requirements at 40 CFR 98.386(a)(1), (a)(5), (a)(13), (b)(1), and (c)(1) for each facility, importer, and exporter to report the annual quantity of each product or natural gas liquid on the basis of the measurement method used. The EPA received no comments to the proposed changes.

*T. Subpart MM—Suppliers of Petroleum Products*

1. Summary of Final Amendments

We are finalizing revisions to 40 CFR part 98, subpart MM (Suppliers of Petroleum Products) as proposed to clarify requirements and amend data reporting requirements to reduce burden for reporters. Based on a comment received, we are also removing the requirement to report a complete list of methods used to measure the annual quantities reported for each product or natural gas liquid. The more substantive corrections, clarifications, and other amendments to subpart MM are found here. Additional minor corrections, including changes to the final rule, are presented in the Table of 2013 Revisions (see Docket Id. No. EPA–HQ–OAR–2012–0934).

We are finalizing the amendments to clarify the equation term for ''$Product_i$'' at 40 CFR 98.393(a)(1) and (a)(2) to exclude those products that entered the refinery but are not reported under 40 CFR 98.396(a)(2) as proposed.

We are finalizing as proposed the harmonizing changes to 40 CFR 98.394(b)(3) to make the equipment calibration requirements for petroleum products suppliers consistent with other Part 98 calibration requirements.

We are removing as proposed the requirements of 40 CFR 98.396(a)(1), (a)(5), (a)(13), (b)(1), and (c)(1) for each facility, importer, and exporter to report the annual quantity of each petroleum product or natural gas liquid on the basis of the measurement method used. We are also removing the requirements of 40 CFR 98.396(a)(4), (a)(8), (a)(15), (b)(4), and (c)(4) for each facility, importer, and exporter to report a complete list of methods used to measure the annual quantities reported for each product or natural gas liquid.

We are eliminating as proposed the reporting requirement for individual batches of crude oil feedstocks. The reporting requirements for crude oil at 40 CFR 98.396(a)(20) are changed, as proposed, to require only the annual quantity of crude oil.

We are eliminating the requirement to measure the API gravity and the sulfur content of each batch of crude oil at 40 CFR 98.394(d) as proposed. We are also removing, as proposed, the requirement at 40 CFR 98.394(a)(1) that a standard method by a consensus-based standards organization be used to measure crude oil on site at a refinery, if such a method exists. Other associated changes to the rule to harmonize with this change include removing the definition of ''batch'' from 40 CFR 98.398, removing the procedures for estimating missing data for determination of API gravity and sulfur content at 40 CFR 98.395(c), and the recordkeeping requirement for crude oil quantities at 40 CFR 98.397(b).

We are including, as proposed, the definitions of natural gas liquids (NGL) and bulk NGLs in the subpart MM definitions at 40 CFR 98.398 to clarify the distinction between NGL and bulk NGL for reporting purposes under subpart MM. We are also clarifying, as proposed, the reporting requirements for bulk NGLs and NGLs. We are modifying, as proposed, the requirement at 40 CFR 98.396(a)(22) to specify that NGLs reported in 40 CFR 98.396(a)(2) should not be reported again in 40 CFR 98.396(a)(22).

We are revising, as proposed, the default density and emission factors in Table MM–1 for propane, propylene, ethane, ethylene, isobutane, isobutylene, butane, and butylene. Please refer to the preamble to the proposed rule (78 FR 19802, April 2, 2013) for additional information regarding the amendments to subpart MM.

2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to the proposed amendments to subpart MM. See the comment response document for subpart MM in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart MM. The majority of comments received on subpart MM supported the proposed revisions. A small number of comments were received requesting additional revisions to the reporting requirements that were not proposed. No comments were received opposing the proposed revisions.

*Comment:* We received several comments supporting the EPA's proposed revision to eliminate reporting of product volumes by measurement method, but one commenter suggested that the requirement to report a list of methods used to measure the annual product quantities reported should also be eliminated as it is tangential to the GHG emissions data.

*Response:* While the list of measurement methods would help the EPA assess the appropriateness of the standard methods and industry practices that individual reporters select, to further reduce the burden on reporters, the EPA incorporated the commenter's proposed changes because the EPA agrees that the list is tangential to the GHG emissions data when considered along with the other revisions to subpart MM that are being finalized. The EPA will not require that petroleum product suppliers report the standard method or industry standard practice used to measure product quantities that are reported to the EPA.

*U. Subpart NN—Suppliers of Natural Gas and Natural Gas Liquids*

1. Summary of Final Amendments

We are finalizing several amendments to 40 CFR part 98, subpart NN (Suppliers of Natural Gas and Natural Gas Liquids) to clarify reporting requirements and improve data quality, where appropriate. Additional minor corrections, including changes to the final rule, are presented in the Table of 2013 Revisions (see Docket Id. No. EPA–HQ–OAR–2012–0934). We are finalizing, as proposed, the amendments to the definition of Local Distribution Companies (LDCs) in 40 CFR 98.400(b) to coincide with the definition of LDCs in 40 CFR 98.230(a)(8) (40 CFR part 98, subpart W) to clarify that for LDCs operating in multiple states, operations in each state are considered a separate LDC. We are also finalizing, as proposed, the revision to clarify that interstate and intrastate pipelines delivering natural gas directly to major industrial users or to farm taps upstream of the LDC inlet are not included in the definition of an LDC.

We are finalizing, with revisions, the proposal to change the way LDCs report the annual volume of natural gas delivered to each large end-user registering supply equal to or greater than 460,000 thousand standard cubic feet (Mscf) during the calendar year. The EPA had previously proposed changing this requirement so that if an LDC knows that a group of meters serves one particular facility receiving a total of greater than 460,000 Mscf during the year, the LDC would be required to report those deliveries per facility rather than per meter. The EPA received two comments that the proposed amendments did not make it clear how LDCs could ensure compliance, specifically, commenters stated it was unclear how much research an LDC should do in order to back up an assertion that the LDC does not ''know'' whether a series of meters serves one large facility. The commenters suggested that the EPA modify the proposed text to state that the reporting be done at the facility level only if the LDC ''knows based on readily available information that multiple meters serve one end user facility.'' As a result of this comment, the EPA has finalized language to state that an LDC must report the large end-user in this manner if the LDC ''knows based on readily available information in the LDCs possession'' that multiple meters serve an individual end-user facility to clarify our intention that new research is not required on the behalf of the LDC to determine which meters serve which facilities. Further, the commenters expressed concern that the terms ''customer'' and ''end user facility'' were used inconsistently in the rule and preamble and suggested the term ''end user facility'' be used throughout to improve clarity. As a result of this comment, the EPA has modified the final rule to consistently refer to such end-users as ''large end-users.'' In 98.404(b)(2)(i), the EPA has defined a large end-user as any facility receiving greater than or equal to 460,000 Mscf of natural gas per year, or, if the LDC does not know the total quantity of gas delivered to the end-user facility based on readily available information in the LDC's possession, any single meter at an end-user facility to which the LDC delivers equal to or greater than 460,000 Mscf per year. The term ''large end-user'' was added throughout the regulatory text to replace ''end-user'', as appropriate, and references to this definition were inserted as appropriate to reduce confusion and increase consistency and clarity.

We are finalizing, as proposed, the revision to replace Equation NN–5 with two Equations, NN–5a and NN–5b, to allow LDCs to more accurately calculate the amount of carbon dioxide associated with the net change in natural gas stored on system and natural gas received by the LDC that bypassed the city gate. The EPA is also finalizing the harmonizing revisions to Equation NN–6 that incorporates the two proposed NN–5 equations.

Additionally, we are finalizing, as proposed, the revision to require natural gas liquids fractionators to report the quantity of o-grade, y-grade, and other types of bulk NGLs received and the quantity of these NGLs not fractionated, but supplied downstream.[29]

Finally, we are finalizing, as proposed, the changes to the default HHV and emission factors in Table NN–1 and NN–2 for LPGs including propane, ethane, isobutane and butane, as well as the factors for natural gas.

2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to the proposed amendments to subpart NN. See the comment response document for subpart NN in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart NN.

*Comment:* The EPA received four comment letters regarding the proposed amendments to subpart NN. While most of the comments supported the EPA's amendments, we received two comment letters expressing concern that the proposed amendments to the LDC reporting requirements for natural gas supplied to large end-users (i.e., those meters or facilities receiving more than 460,000 Mscf per year) are confusing and lacked clarity. The commenters noted the phrases ''customer meter'' and ''end-user facility'' were used inconsistently throughout the rule. They believe this inconsistency could be confusing to reporters. To improve clarity, the commenters recommended the term ''end-user facility'' be used throughout the rule. The commenters are also concerned the proposed phrase ''if known'' in 40 CFR 98.406(b)(7) does not provide sufficient clarity regarding

[29] We are finalizing confidentiality determinations for significantly revised data element in 40 CFR 98.406. See Section V of this preamble for additional information.

the level of research required by LDCs to determine which meters supply natural gas to each large end-user facility. They noted that LDCs often send one bill to a company's main office reflecting gas usage for all facilities across a state and in such cases gas usage from one individual facility may not be readily known. The commenter suggested the phrase ''if known'' be replaced with ''if known based on readily available information.'' One commenter suggested the ''end-user'' be defined as ''a single service address'' to avoid confusion with the EIA Form 176 reporting of natural gas supply by end-user categories. Finally, one commenter was concerned about the reporting burden associated with determining total fuel deliveries to facilities with many meters, especially those facilities with many meters that receive only a small quantity of gas (less than 50,000 Mscf). The commenter suggested that only meters which record an annual total of 50,000 Mscf or greater per year be included in the total reported deliveries to a large end-user facility.

*Response:* In the existing rule, LDCs are required to report natural gas delivered to individual meters that received equal to or more than 460,000 Mscf per calendar year. Under Part 98, the $CO_2$ quantity reported by LDCs associated with deliveries to large end-use meters (i.e., the value calculated using Equation NN–4) has been collected because the large end-user facilities that receive gas through these meters report GHG emissions from natural gas combustion to the EPA in other subparts of Part 98. With the information collected in Equation NN–4, the EPA has been able to quantify a significant portion of the total $CO_2$ that is double reported by LDCs and large end-user facilities. This has helped the EPA to estimate the total national $CO_2$ emissions from natural gas combustion reported under the GHGRP.

As we noted in the preamble to the proposed amendments, this approach did not always address the overlap in $CO_2$ reported by LDCs in subpart NN and large end-user facilities subject to other subparts of Part 98 (for example subpart C or D). For example, in situations where 460,000 Mscf or more of natural gas is supplied to a single large end-user facility in a calendar year by a series or group of meters, where each individual meter receives less than 460,000 Mscf, the $CO_2$ associated with this gas was not reported under subpart NN, and the quantity of overlap could not be determined. To improve the quality of the national $CO_2$ emissions estimate for natural gas combustion, we are finalizing the proposed amendments requiring LDCs to report the quantity of natural gas delivered to each facility known by the LDC to receive equal to or greater than the 460,000 Mscf per year, with some clarifications. The EPA is not requiring LDCs undertake any new research to determine which meters supply gas to each large end-user facility. Rather LDCs should use the information already available to them in their existing records (e.g., meter addresses or billing records). If an LDC has insufficient information to make the determination, they may continue to report data for each gas meter that receives equal to or greater than 460,000 Mscf per year. To clarify our intention, we agreed with the commenter and have amended 40 CFR 98.403(b)(2)(i) to define the term ''large end-user'' as either any large end-user facility receiving greater than or equal to 460,000 Mscf of natural gas per year or a single meter receiving equal to or greater than 460,000 Mscf per year when the LDC does not know the total quantity of gas delivered to the facility, based on readily available information in the LDC's possession. We revised 40 CFR 98.404 and 40 CFR 98.406 to make those sections consistent with the changes made in 40 CFR 98.403(b)(2).

The EPA considered using the term ''single service address'' to refer to facilities that receive equal to or greater than 460,000 Mscf per year as suggested by one commenter as a means of reducing potential confusion between natural gas supply data reported under 40 CFR 98.406(b)(7) for individual large end-users (either a facility or meter) and natural gas reported under 40 CFR 98.403(b)(13) for the EIA end-use categories. However, we decided not to make this change since the new definition added to 40 CFR 98.403(b)(2)(i) should reduce the likelihood that reporters will confuse the two reporting requirements. Also, the term ''facility'' is already defined in Part 98 and used consistently throughout the rule. We were concerned that introducing a new term to refer to a facility could result in greater confusion as the suggested change would make subpart NN inconsistent with other subparts of the rule.

The EPA disagrees with the commenter's recommendation that LDCs be required to report only meters with fuel usage of 50,000 Mscf or greater for large end-user facilities that exceed the reporting threshold in aggregate and have multiple meters. We disagree with this recommendation for several reasons. First, the approach suggested by the commenter would compromise the quality and usefulness of the data collected. The EPA's intention in collecting these data is to quantify the overlap in reported $CO_2$ between subpart NN and other subparts in estimating total U.S. $CO_2$ emissions from natural gas combustion. Under the subparts applicable to large end-user facilities, direct emitters report emissions for all combustion units and processes located at their facility, regardless of the quantity of emissions from the unit or process. Therefore, if LDCs did not report the $CO_2$ quantity associated with gas delivered through small meters, the overlap could not be properly determined. While the impact on the $CO_2$ quantity for an individual facility would be small, the impact on the quality of national $CO_2$ estimates would be more significant and would be difficult to quantify. Since Part 98 requires direct emitters to report all emissions from combustion sources, allowing LDCs to report natural gas supplied to some but not all meters located at large end-user facilities would result in an overestimate of national $CO_2$ emissions from natural gas combustion. It is EPA's intention to quantify national $CO_2$ emissions from natural gas combustion as accurately as possible.

Second, under the suggested approach, the reporter would be required to determine the quantity of natural gas flowing through each of these meters to assess whether it exceeds the 50,000 Mscf threshold, which means the quantity of gas flowing through each meter would still need to be determined under the commenter's proposed approach as it is under the final rule. The methodology used to calculate the $CO_2$ quantity associated with this gas is simple, once the quantity of fuel has been determined (fuel quantity times an emission factor and heating rate, which may be default factors). Therefore, the EPA has determined that there is not a significant burden associated with calculating and reporting this $CO_2$ quantity.

Finally, the suggested approach to require that only gas delivered through a meter with a fuel usage of 50,000 Mscf per year or greater be reported would result in additional reporting burden for many LDCs. This is the case, for example, when the total quantity of gas delivered to a customer is known based on billing records or other information. Requiring LDCs to evaluate, and subtract out, the usage for each individual meter that supplies a single large end-user facility with less than 50,000 Mscf per year could be time consuming. This evaluation would need to be completed for each reporting year, since the gas delivered through a particular meter may be above the threshold one year and below the

threshold the next year. We anticipate that the process of evaluating and subtracting out the gas supplied to smaller meters, as recommended by the commenter, would require considerable additional work for LDCs.

*V. Subpart PP—Suppliers of Carbon Dioxide*

We are finalizing three substantive amendments to subpart PP of Part 98 (Suppliers of Carbon Dioxide) as proposed. One additional minor correction, discussed in the Table of Revisions (see Docket Id. No. EPA–HQ–OAR–2012–0934), is finalized as proposed.

We are amending 40 CFR 98.423(a)(3)(i) as proposed to clarify that facilities with $CO_2$ production wells that extract or produce a $CO_2$ stream may use Equation PP–3a to aggregate the total annual mass of $CO_2$ from multiple extracted streams. This clarifying change increases the reporting flexibility for facilities with $CO_2$ production wells by allowing them to aggregate $CO_2$ emissions from multiple $CO_2$ streams.

We are also amending the reporting requirements of 40 CFR 98.426(f)(10) and (f)(11) as proposed, which require reporting the aggregated annual $CO_2$ quantities transferred to enhanced oil and natural gas recovery or geologic sequestration. The final rule amendments clarify that these end use application options reflect injection of $CO_2$ to geologic sequestration or enhanced oil recovery as covered by 40 CFR part 98, subparts RR and UU, respectively. The EPA received no comments on the proposed changes.

*W. Subpart QQ—Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams*

1. Summary of Final Amendments

The EPA is finalizing multiple revisions to subpart QQ (Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-Charged Equipment or Closed-Cell Foams) as proposed. The more substantive corrections, clarifying, and other amendments to subpart QQ are discussed in this section. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934).

We are correcting the equation term ''$S_t$'' in Equations QQ–1 and QQ–2 as proposed to clarify that the input may be mass (charge per piece of equipment) or density (charge per cubic foot of foam, kg per cubic foot). We are amending an example within the definition of ''closed-cell foam'' at 40 CFR 98.438 as proposed. We are replacing the term ''appliance'' with the term ''equipment'' at 40 CFR 98.436(a)(3), (a)(4), (a)(6)(ii), (a)(6)(iii), (b)(3), (b)(4), (b)(6)(ii), and (b)(6)(iii). We are revising the reporting requirements for 40 CFR 98.436(a)(6)(iii) and (b)(6)(iii) as proposed to match the reported data element to the units required to be reported. The revision is a change from ''mass in $CO_2e$'' to ''density in $CO_2e$.'' We are amending the definition of ''pre-charged electrical equipment component'' at 40 CFR 98.438 as proposed.

Finally, we are removing the following reporting requirements to alleviate burden on reporters as proposed: 40 CFR 98.436(a)(5), (a)(6)(iv), (b)(5), and (b)(6)(iv). Please refer to the preamble to the proposed rule (78 FR 19802, April 2, 2013) for additional information regarding the amendments. The EPA received no comments opposing the proposed changes to subpart QQ.

2. Summary of Comments and Responses

See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart QQ. The EPA did not receive any significant comments on the proposed changes and there are no changes to the rule based on these comments.

*X. Subpart RR—Geologic Sequestration of Carbon Dioxide*

We are finalizing corrections to subpart RR of Part 98 (Geologic Sequestration of Carbon dioxide). The more substantive corrections, clarifying, and other amendments to subpart RR are discussed in this section. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934).

As proposed, we are adding a requirement for facilities to report the standard or method used to calculate the mass or volume of contents in containers that is redelivered to another facility without being injected into the well.[30] The EPA received no comments on the proposed changes.

[30] The EPA is also finalizing a data category and confidentiality determination for this data element. See the Confidentiality Determinations Memorandum, ''Final data category assignments and confidentiality determinations for (Docket Id. No. EPA–HQ–OAR–2012–0934).

*Y. Subpart SS—Electrical Equipment Manufacture or Refurbishment*

We are finalizing clarifying amendments and other corrections to subpart SS of Part 98 (Electrical Equipment Manufacture or Refurbishment). The more substantive corrections, clarifying, and other amendments to subpart SS are discussed in this section. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934).

We are harmonizing 40 CFR 98.453(d) and 40 CFR 98.453(h) as proposed to clarify the options available to estimate the mass of $SF_6$ and PFCs disbursed to customers in new equipment. The final rule corrects inconsistencies between paragraphs so that all options are clearly identified as available.

We are adding text to 40 CFR 98.453(d) to include the options to use the nameplate capacity of the equipment by itself and to use the nameplate capacity along with a calculation of the partial shipping charge. We are also revising 40 CFR 98.453(h) to clarify that these calculation requirements only apply where reporters choose to estimate the mass of $SF_6$ or PFCs disbursed to customers in new equipment using the nameplate capacity of the equipment, either by itself or together with a calculation of the partial shipping charge. These amendments are finalized as proposed. The EPA received no comments on the proposed changes.

*Z. Subpart TT—Industrial Waste Landfills*

1. Summary of Final Amendments

We are finalizing several amendments to 40 CFR part 98, subpart TT to clarify and correct calculation methods, provide additional flexibility for certain monitoring requirements, and clarify reporting requirements. We are finalizing, as proposed, the minor corrections discussed in the Table of 2013 Revisions (see Docket Id. No. EPA–HQ–OAR–2012–0934). We are finalizing amendments, as proposed, to revise the definition of the term ''$DOC_F$'' in Equation TT–1 when a 60-day anaerobic biodegradation test is used as well as revisions to Equation TT–7, which is used to determine a waste stream-specific DOC value when a facility performs a 60-day anaerobic biodegradation test.

We are finalizing revisions to 40 CFR 98.464(b) and (c) to broaden the provisions to determine volatile solids concentration for historically managed waste streams. The revisions to 40 CFR

98.464(b) are being finalized as proposed. The revisions to 40 CFR 98.464(c) are being finalized as proposed except that we are deleting the proposed phrase ''but was not received during the first reporting year'' to broaden the applicability of these provisions in consideration of the public comments received.

We are finalizing amendments to 40 CFR 98.466(b)(1), as proposed, to clarify that waste quantities for inert waste steams must be reported. We are also finalizing amendments to the reporting requirements specific to Equations TT–4a and TT–4b in 40 CFR 98.466(c)(4), as proposed.[31]

We are finalizing amendments, as proposed, to revise the oxidation fraction default value (''OX'') in Equation TT–6 to reference the default values in Table HH–4; however, there are a number of revisions to Table HH–4 from the proposed table upon consideration of the public comments received. These revisions include limiting the new oxidation factors to landfills with soil covers of at least 24 inches for a majority of the landfill area containing waste, allowing the continued use of the 0.10 default oxidation factor, and clarifying that the modeled methane generation term for facilities subject to subpart TT is the result from Equation TT–1, not Equation HH–1. Please see Section II.R of this preamble for more details regarding these revisions.

We are finalizing amendments, as proposed to Table TT–1 of subpart TT of Part 98 to include an ''industrial sludge category'' and to clarify certain industry default DOC values were applicable to wastes ''other than industrial sludge.'' Based on public comments received, we are adding a definition of ''industrial sludge'' to 40 CFR 98.468 to clarify what waste streams are included in this waste category.

2. Summary of Comments and Responses

Several comments were received from industrial waste landfill owners or operators regarding the proposed oxidation fractions assigned by methane flux rates in Table HH–3. These comments and responses are included in Section II.R. of this preamble. The significant comments and responses related to other proposed amendments to subpart TT are summarized in this section. See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to subpart TT.

*Comment:* A commenter noted that the original subpart TT regulations allowed facilities to develop a DOC for use when estimating emissions from historic waste deposits. According to the commenter, it appeared that once such a DOC was developed, the same DOC was required to be used for these historic deposits in all future reports under the Greenhouse Gas Reporting Rule, even if better information became available. The commenter pointed to 40 CFR 98.463(a)(3), particularly the passage: ''The historical values for DOC or DOCx must be developed only for the first annual report required for the industrial waste landfill; and used for all subsequent annual reports (e.g., if DOC for year x = 1990 was determined to be 0.15 in the first reporting year, you must use 0.15 for the 1990 DOC value for all subsequent annual reports).'' The commenter stated that this was not reasonable since facilities had relatively little time to develop such historical DOCs, following the EPA's protocol, for the first required reporting of landfill methane emissions under a new reporting scheme and procedures. Making those initial determinations unchangeable, the commenter noted, would not make sense when the EPA is revising DOCs applicable to various wastes landfilled in the forest products industry.

The commenter further asserted that this interpretation that the historical DOC that the facility first chose is fixed for all time appears to be at odds with 40 CFR98.3(h), which requires a facility to submit a revised report if the facility becomes aware of a substantive error in the prior report—which presumably could include an error in the DOC applied to historical deposits in the landfill. The commenter pointed to a response to a question from the EPA e-GGRT Help Desk, which indicated that a facility could recalculate and resubmit an annual GHG report if it determined that there is a more accurate method for estimating emissions, which could include a more accurate DOC than what was used in the past.

*Response:* The requirements in 40 CFR 98.463(a) to determine the historical waste quantities and DOC values for the first annual report and to use those values for all subsequent annual reports is based on the need to have a single, consistent waste disposal timeline across annual reports. The requirement was also intended to make it clear that owners or operators of landfills did not have to recalculate an average DOC value determined according to the provisions in 40 CFR 98.463(a)(3)(iv) if additional measurements are made for subsequent reporting years. The EPA did not intend, however, to prevent landfill owners and operators from correcting known errors or inaccuracies in the historical waste disposal quantities or DOC values. For example, if DOC values are determined using the anaerobic degradation method for the first time in the 2013 reporting year and that determination indicates that the historical DOC values used are in error, we do not interpret the language in 40 CFR 98.463(a)(3) to prevent correction of these historical DOC values. We note that the language in 40 CFR 98.463(a)(2) and (3) specifically uses the phrase ''for the first annual report'' and does not require that the measurements be made in the ''first reporting year.'' That is, we interpret the language used in 40 CFR 98.463(a)(2) and (3) to require a consistent historical time series for waste quantities and DOC values be used in all annual reports. Revisions to the historical waste quantities and DOC values are permissible, but the entire time series of annual reports must be revised and resubmitted so that they are consistent with the revised ''first annual report.''

However, we do not agree that the proposed language in 40 CFR 98.464(c) effectively limits the applicability of the methods to determine historical DOC values to waste streams that were not received ''during the first reporting year.'' Although this provision was specifically added to address comments that some waste streams that were historically managed in the landfill were not generated during the first reporting year, it is unnecessary to limit the use of these methods to only waste streams that were not received in the first reporting year. Specifically, we acknowledge that the anaerobic test method was not included in subpart TT until late 2011, so that this method could not be used to establish waste stream-specific DOC values for the first annual report. We did not intend to limit the use of the anaerobic test method to only those streams that were not received during the first reporting year. Therefore, we are revising the proposed language at 40 CFR 98.464(c) to delete the phrase ''but was not received during the first reporting year'' to remove this restriction. Therefore, facilities can use test data from more recent years to revise the historical waste records provided that all annual reports are revised to use the same historical waste records. However, we also clarify, per our original intent, that

[31] We are finalizing confidentiality determinations for the significantly revised data elements in 40 CFR 98.466. See Section V of this preamble for additional information.

it is not necessary to revise these historical DOC values (and all historical annual reports) each year new DOC measurements are made. Thus, the owner or operator can choose to use ''current reporting year'' DOC measurement values only for the current reporting year. Alternatively, the owner or operator can use the new information to revise the historical waste values, but then they must revise and resubmit all previous annual reports so that the historical waste records for all annual reports are consistent with the records used in the ''first annual report.''

*Comment:* A commenter noted that they have several waste streams that have DOC values more similar to the new default for industrial sludge than the defaults for waste streams ''(other than sludge).'' The commenter stated that the approach to DOCs that EPA has proposed would therefore continue to overstate substantially the GHG emissions from industrial waste landfills. The commenter suggested that the EPA either add more detailed DOC waste stream defaults to Table TT–1 or clarify that the term ''industrial sludge'' (which is undefined in the proposed rule) is intended to encompass materials that meet the common, dictionary meaning of ''sludge'' (e.g., ''thick, soft, wet mud or a similar viscous mixture of liquid and solid components, especially the product of an industrial or refining process''), as well as the meaning the EPA often gives to ''sludge,'' i.e. residue removed from wastewater treatment or air pollution control equipment. This would then allow industrial waste landfill owners or operators to apply the ''industrial sludge'' DOC to a wider array of waste streams.

*Response:* With respect to adding more detailed waste stream-specific DOC defaults to Table TT–1, we note that industrial waste landfill owners and operators may elect to determine a waste stream specific DOC value specific for their operations. We included in subpart TT a series of simple and inexpensive tests by which landfill owners and operators may elect to develop more accurate DOC values, as well as a more detailed anaerobic degradation tests if even more accurate values are desired. Landfill owners or operators that have a significant quantity of waste that is not well-characterized by the Table TT–1 defaults may elect to determine their own waste stream-specific DOC value to use in their emission calculations. As noted in our previous response, if these site-specific values are determined for the first time in the 2013 reporting year, the landfill owner or operator can elect to (but is not required to) revise their historical DOC values and resubmit all previous annual reports based on the revised historical DOC values.

The EPA is willing to consider expanding the list of default DOC values in Table TT–1 to include additional waste streams that are commonly found at industrial landfills. We are willing to work with the commenter and other stakeholders to gather further information to support the change requested and examine whether it should be included in a future rulemaking. However, the information provided by the commenter is new, contains only limited data, and was not part of the original proposal. Additional DOC test data for these waste streams from a larger and more representative sample of facilities would greatly inform such a decision.

With respect to the lack of a definition of ''industrial sludge,'' we agree that clarity is needed. This category was specifically added to address concerns regarding inconsistencies with the DOC values for industrial waste in the 2006 IPCC Guidelines. The 2006 IPCC Guidelines appears to refer to ''sludge'' in reference to wastewater treatment sludges. As the ''industrial sludge'' waste category was specifically added to provide consistency with the 2006 IPCC Guidelines, we are adding a definition of ''industrial sludge'' to clarify that this term specifically refers to sludges collected in wastewater treatment systems or sludges from ''wet'' air control systems (e.g., wet scrubbers). Specifically, ''*Industrial sludge* means the residual, semi-solid material left from industrial wastewater treatment processes or wet air pollution control devices (e.g., wet scrubbers). *Industrial sludge* includes underflow material collected in primary or secondary clarifiers, settling basins, or precipitation tanks as well as dredged materials from wastewater tanks or impoundments. *Industrial sludge* also includes the semi-solid material remaining after these materials are dewatered via a belt press, centrifuge, or similar dewatering process.'' The EPA believes that the definition suggested by the commenter is overly broad and could encompass materials not intended to be covered. As stated above, the EPA is willing to work with stakeholders to gather and analyze information needed to further refine the list of default DOC values in Table TT–1.

### *AA. Subpart UU—Injection of Carbon Dioxide*

We are finalizing amendments to 40 CFR part 98, subpart UU (Injection of Carbon Dioxide). The more substantive corrections, clarifying, and other amendments to subpart UU are discussed in this section. We are finalizing all of the minor corrections presented in the Table of 2013 Revisions as proposed (see Docket Id. No. EPA–HQ–OAR–2012–0934).

The EPA is adding a requirement to subpart UU for a facility to report the purpose of $CO_2$ injection (i.e., Research and Development (R&D) project exemption from subpart RR, enhanced oil or gas recovery, acid gas disposal, or some other reason).[32] We are adding a requirement for facilities to report the standard or method used to calculate the parameters for $CO_2$ received in containers.[33] These amendments are finalized as proposed. The EPA received no comments on the proposed changes.

### *BB. Other Technical Corrections*

#### 1. Summary of Final Amendments

The EPA is finalizing minor corrections to subparts E, G, S, V, and II of Part 98 as proposed. The changes to these subparts are provided in the Table of Revisions for this rulemaking, available in Docket Id. No. EPA–HQ–OAR–2012–0934, and include clarifying requirements to better reflect the EPA's intent, corrections to calculation terms or cross-references that do not revise the output of calculations, harmonizing changes within a subpart (such as changes to terminology), simple typo or error corrections, and removal of redundant text.

#### 2. Summary of Comments and Responses

This section summarizes the significant comments and responses related to minor corrections to subparts E, G, S, V, and II. The EPA received one comment related to subpart G. See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934.

*Comment:* One commenter asked that the EPA revise subpart G to require the reporting of $CO_2$ emitted directly to the atmosphere from the synthetic ammonia production process.

The commenter noted that the $CO_2$ captured during ammonia production and used to produce urea ''does not contribute to the $CO_2$ emission estimates for ammonia production.'' The commenter reasoned that reporting the $CO_2$ which is bound in urea, as required under subpart G, is inconsistent with other source categories covered by the rule, and is contrary to EPA's

[32] The EPA is also finalizing category assignments and confidentiality determinations for new and revised data elements in the Confidentiality Determinations Memorandum(Docket Id. No. EPA–HQ–OAR–2012–0934).

[33] *Id.*

methodology used in the Inventory. The commenter also noted that the structure of subpart G is similar to the structure of subpart P, but should be revised to be similar to the structure of subpart X. The commenter argued that sources in subpart G should be allowed to ''reduce their $CO_2$ reporting for $CO_2$ in urea'' in the same way that sources in subpart X are allowed to ''reduce their carbon reporting for carbon in products.''

*Response:* The EPA acknowledges the commenter's suggested revisions to the language in subpart G to require reporting only $CO_2$ that is emitted directly to the atmosphere from ammonia manufacturing rather than reporting $CO_2$ that is bound in the urea that is produced from ammonia at some facilities. However, the comment falls outside of the scope of this rulemaking. The EPA had proposed clarifications to 40 CFR 98.76(b)(13) of subpart G but had not proposed any revisions to the calculation and monitoring methods described in the rule. Therefore, the EPA is not proposing any revisions in response to this comment at this time.

However, the commenter has raised a consistency issue within Part 98, that subpart G facilities currently are required to report $CO_2$ that is bound in urea rather than emitted directly to the atmosphere, that merits evaluation and requires further analysis by the EPA. Prior to any modification of the rule language, the EPA will comprehensively assess the implications of such a change to the rule and propose any such revisions for public comment. This will ensure that the EPA is not introducing new or additional issues for facilities reporting under subpart G and other similar subparts, especially in the treatment of emissions that are collected onsite for other uses.

*CC. Subpart I Correction*

Following signature of the final rule titled, ''Greenhouse Gas Reporting Program: Final Amendments and Confidentiality Determinations for Electronics Manufacturing'' [78 FR 68162] (''final subpart I rule''), the EPA identified an inconsistency between the preamble and final rule text. In the preamble, we stated that we were finalizing the requirements for the triennial technology report in section 98.96(y) as proposed, which was our intention. However, a sentence was inadvertently added to 98.96(y)(3)(i) in the final subpart I rule. In today's final rule, we are correcting this error to finalize 98.96(y)(3)(i) as proposed in ''Greenhouse Gas Reporting Program: Proposed Amendments and Confidentiality Determinations for Subpart I'' [77 FR 63538].

## III. Schedule for the Final Amendments and Republication of Emission Estimates for Prior Year Reports

### *A. Schedule for Final Amendments and Significant Comments*

1. Summary of Final Amendments

This section describes when the final amendments become effective for existing reporters and new facilities that are required to report as a result of the amendments to Table A–1. This section also discusses final amendments to subpart A for the use of best available monitoring methods (BAMM) by new reporters and the EPA's intentions for republishing emissions estimates for the 2010, 2011, and 2012 reporting years that reflect the changes in GWPs, based on the annual reports previously submitted by existing reporters.

*Existing Reporters.* The final rule requires that existing GHGRP reporters begin using the updated GWPs in Table A–1 for their reporting year 2013 annual reports, which must be submitted by March 31, 2014, as proposed. We have determined that it is feasible for existing reporters to implement the final rule changes for the 2013 reporting year because these revisions do not require changes to the data collection and calculation methodologies in the existing rule. The EPA does not anticipate that the revised GWPs in Table A–1 will require any existing reporters to report under new subparts. The EPA received no comments identifying such a reporter. Such a reporter, if one exists, is not required to report for any past years under any subparts for which the reporter's emissions newly exceed a reporting threshold, and may use the BAMM provisions described below.

*Reporters subject to any subpart of Part 98 for the first time.* We are finalizing the schedule for reporters that become newly subject to any subpart as proposed. The final rule requires reporters who are newly required to report under any subpart of Part 98 as a result of the changes to Table A–1 to begin collecting data on January 1, 2014 for the 2014 reporting year. These reporters are required to submit their first reports, covering the 2014 reporting year, by March 31, 2015. This schedule allows time for reporters to acquire, install, and calibrate any necessary monitoring equipment for the subparts to which they are subject in the 2014 reporting year.

As proposed, we are adding provision 40 CFR 98.3(l) to subpart A to allow reporters who are required to newly report under any subpart solely as a result of the revised GWPs in Table A–1 to have the option of using BAMM from January 1, 2014 to March 31, 2014 for any parameter that cannot reasonably be measured according to the monitoring and QA/QC requirements of a relevant subpart. We are allowing reporters to use BAMM during the January 1, 2014 to March 31, 2014 time period without submitting a formal request to the EPA. Reporters will also have the opportunity to request an extension for the use of BAMM beyond March 31, 2014; those owners or operators must submit a request to the Administrator by January 31, 2014. The EPA does not anticipate allowing the use of BAMM for reporters subject to any subpart of Part 98 for the first time as a result of Table A–1 changes beyond December 31, 2014. The final schedule will allow five to six months after publication of this final rule to prepare for data collection while automatically being able to use BAMM, which is consistent with prior BAMM schedules. These provisions provide additional flexibility for new reporters and do not supersede existing subpart-specific BAMM requirements (e.g., the ability to request BAMM beyond 2011 for subpart W reporters (*see* 40 CFR 98.1(b)). This additional time for new reporters to comply with the monitoring methods in Part 98 will allow many facilities to install the necessary monitoring equipment during other planned (or unplanned) process unit downtime, thus avoiding process interruptions.

2. Summary of Comments and Responses—Schedule

*Comment:* One commenter recommended that the effective date for the revised and new GWPs be 12 months after the new values are finalized. The commenter stated that a one-year transition would allow reporters to address compliance issues related to GHG reporting, GHG permitting, and related projects that may arise due to the revised GWPs. The commenter stated that delaying implementation of GWPs for one year is reasonable because the changes will create compliance problems. The commenter asserted that it is not appropriate to apply the revised GWPs to 2013 emissions, given that the rulemaking affects who must report and the gases that must be reported. The commenter suggested that the new GWPs be used starting in reporting year 2014.

Some commenters stated that companies and facilities will have to reprogram their data acquisition, analysis, and reporting systems to incorporate revised emission factors, revised emission estimation methods,

and revised reporting requirements. Commenters suggested that the final rule should defer the reporting deadline for 2013 emissions, suggesting increments of at least three or six months after the final revisions are published in the **Federal Register**. Commenters expressed concern about the time required to implement the final rule changes into existing reporting systems, particularly with respect to making changes to internal reporting systems to align with EPA's final extensible markup language (XML) schema or reporting forms.

*Response:* Because the revised GWPs finalized in this rule are only for compounds that are already listed in Table A–1, reporters do not have to provide additional information for their reporting year 2013 reports and there is no additional burden associated with calculating $CO_2e$ using the revised GWPs. In this final rule, we are not incorporating GWPs from the additional 26 compounds that we proposed to add to Table A–1 in the proposed 2013 Revisions Rule (see Section I.D. of this preamble). As discussed in the preamble to the 2013 Revisions proposal, the EPA intends to use data from the reporting year 2013 GHGRP reports to supplement the top-down national estimate and develop the 2015 Inventory. Therefore, and because the final GWP changes add no burden to existing reporters, we are requiring existing GHGRP reporters to calculate GHG emissions and supply using the revised GWPs from AR4 beginning with RY 2013 reports, which must be submitted by March 31, 2014. New reporters who are required to report under Part 98 as a result of the changes to Table A–1 are required to begin collecting data on January 1, 2014 and must submit their first annual reports by March 31, 2015. We have included provisions in 40 CFR 98.3(l) to allow new reporters to have the option of using BAMM from January 1, 2014 to March 31, 2014, and to request extended BAMM beyond March 31, 2014, which will allow additional time for facilities to prepare for data collection. For concerns regarding the schedule and how this final rule impacts the Tailoring Rule and permitting programs, see Section II.A.2.b of this preamble.

The EPA disagrees with the commenters' recommendations to extend the reporting deadline to accommodate changes to revised emission factors, revised emission estimation methods, and revised reporting requirements. We expect that the final rule changes for the 2013 reporting year are feasible to implement prior to the March 31, 2014 reporting deadline. These changes are consistent with the data collection and calculation methodologies in the existing rule, and primarily provide additional clarifications or flexibility regarding existing regulatory requirements and do not add new monitoring requirements. Therefore, they do not substantially affect the information that must be collected. Where calculation equations are modified, the changes clarify equation terms or simplify the calculations and do not require any additional data monitoring. Because reporters are not required to actually submit reporting year 2013 reports until March 31, 2014, reporters will have adequate time to adjust their internal reporting programs to the finalized amendments before the reporting deadline.

We note that many reporters use the e-GGRT Web-forms or spreadsheets developed by the EPA for preparing submitting their annual reports. The changes to the GWP values finalized in this rule will have minimal impact on these reporters since the $CO_2e$ values are automatically calculated for reporters using these reporting forms. While we agree that reporters using the XML format to report emissions will need to make revisions, we anticipate that there is sufficient time to make these changes and submit annual reports by the March 31, 2014 deadline for reporting year 2013 data. The EPA will ensure that the e-GGRT reporting system is modified in a timely manner so as to not shorten the window for data reporting. The EPA acknowledges commenters' concerns regarding the XML reporting schema. The EPA will work to finalize the XML schema as early as possible to allow reporters adequate time to complete and upload their XML reports.

*Comment:* One commenter recommends that the criteria in proposed 40 CFR 93.3(l)(2)(ii) associated with BAMM requests be revised to take into consideration other considerations, such as safety, that may warrant the use of BAMM. The commenter requests that the EPA provide additional flexibility for use of BAMM under 40 CFR 98.3(l); ensure that BAMM is accessible beyond 2014; ensure that 40 CFR 93.3(l) criteria do not conflict with or supersede other subpart-specific BAMM provisions; and, if BAMM provisions in both subpart A and subpart W apply, clarify and harmonize requirements and schedules under the two subparts, especially for the first and second reporting years for new reporters. The commenter further requested that reporters who must comply with subpart W should have the option to use BAMM from January 1, 2014 to June 30, 2014 without having to request EPA approval.

*Response:* The BAMM provisions in 40 CFR 98.3(l) of subpart A allow new reporters subject to any subpart under Part 98 who would be required to report as a result of the proposed new or revised GWPs to have the option to use BAMM from January 1, 2014 to March 31, 2014 for any parameter that cannot reasonably be measured according to the monitoring and QA/QC requirements of the relevant subpart. These new reporters are allowed to use BAMM during the January 1, 2014 to March 31, 2014 time period without making a formal request to the EPA. Reporters may also request an extension for the use of BAMM beyond March 31, 2014 by submitting a request to and receiving approval from the Administrator in accordance with the provisions in 40 CFR 98.3(l)(2). We do not anticipate permitting the use of BAMM under the provisions of 40 CFR 98.3(l)(2) beyond December 31, 2014. Under the provisions of 40 CFR 98.3(l)(2), new reporters have more than a year to comply with the monitoring and QA/QC requirements of the applicable subparts. We consider this time period sufficient for facilities subject to the rule for the first time in 2014 to acquire, install, and calibrate monitoring equipment to meet the monitoring and QA/QC requirements of the rule. This time period is the same as was allowed for the initial reporting years.

As noted by the commenter, the EPA promulgated additional subpart-specific BAMM provisions for those subparts with unique or unusual situations that would make compliance with the monitoring and QA/QC procedures in those subparts challenging (e.g., subparts I, L, and W). These subpart-specific provisions allow for additional use of BAMM that is not provided under the General Provisions. Under these existing subpart-specific BAMM provisions, a reporter subject to the subpart may request approval to use BAMM for unique and extreme circumstances, such as safety concerns, technical infeasibility, or inconsistency with other local, State or Federal regulations. For example, pursuant to 40 CFR 98.234(f)(8), a reporter subject to subpart W may use BAMM beyond 2011 if it receives approval from the EPA. The new BAMM provisions in the General Provisions, 40 CFR 98.3(l) do not supersede any of these previously promulgated subpart-specific BAMM requirements (see 40 CFR 98.1(b)). Since the deadline to submit subpart W BAMM requests covered in 40 CFR 98.234(f)(8) for the 2014 reporting year has passed, a facility that becomes newly subject to subpart W of Part 98

will be able to use BAMM without making a formal request between January 1, 2014 and March 31, 2014 under the provisions for new reporters in 40 CFR 98.3(l). This reporter may seek approval to use BAMM after this period (between April 1, 2014 and December 31, 2014) under 40 CFR 98.3(l) by submitting an extension request no later than 60 days after the effective date of the final rule. However, for the 2015 reporting year and forward, the new reporter should request approval to further continue using BAMM under subpart W by following the provisions covered in subpart W, 40 CFR 98.234(f)(8).

We decided not to extend the time period during which BAMM may be used without seeking EPA approval despite the commenter's recommendation. Extending the deadline to June 30, 2014 as suggested by the commenter would likely result in some facilities taking longer to comply with the rule than is actually necessary. When facilities use BAMM, the quality of the reported emissions is impacted. Our aim in setting a March 31, 2014 deadline for using BAMM without prior EPA approval is to balance the EPA's need for high-quality data of known accuracy against the reporter's need for sufficient time to install, test, and calibrate new monitoring equipment. For most Part 98 subparts, reporters should have little problem complying with the monitoring provisions by the March 31, 2014 deadline. By requiring reporters to apply for approval to use BAMM beyond March 31, 2014, the EPA will be able to ensure that BAMM is used only in those situations and times periods where its use is necessary.

*B. Republication of Emissions Estimates for Prior Year Reports and Significant Comments*

1. Summary of Republication of Emission Estimates for 2010, 2011, and 2012

In the proposed rule, we presented two options for the revision and republication of the $CO_2e$ estimates from annual reports for reporting years 2010, 2011, and 2012 using the proposed GWP values in Table A–1. Under Option 1, reporters who submitted annual reports for the reporting years 2010, 2011, and 2012 would be required to resubmit their prior year reports using the built-in calculation methods in the EPA's Electronic Greenhouse Gas Reporting Tool (e-GGRT) to convert reported quantities of GHGs to $CO_2e$. Under Option 2, the EPA would independently recalculate revised $CO_2e$ emissions from the prior year reports for each facility using the revised GWPs in Table A–1. Under this scenario, each reporter would be able to view the EPA's revision of its emission or supply totals in previously submitted 2010, 2011, and 2012 reports through e-GGRT. The reporter would not be able to comment on or change the revised estimate.

The EPA received several comments on these proposed options. In general, commenters were concerned about the impact of revising totals from prior year reports that had previously been published. Commenters also expressed concern that facilities would be liable for changes to applicability under Part 98 or other EPA programs if the $CO_2e$ totals in their annual reports for 2010 through 2012 were recalculated. Of those commenters that supported Option 2, several recommended that the EPA allow reporters to comment on the revised $CO_2e$ estimates prior to publication. These comments and the EPA's response to these comments are described in detail in Section III.B.2 of this preamble.

After reviewing the comments submitted by stakeholders, the EPA is finalizing Option 2. Due to concerns raised by commenters, we are clarifying in this final rule that we do not intend to revise the annual reports submitted and certified by reporters for reporting years 2010, 2011, and 2012 to reflect the revised GWPs finalized in this rulemaking. Prior year reports, using original GWPs, will remain publicly available. The EPA will also publish a version of the $CO_2e$ emissions and supply estimates for the reporting years 2010, 2011, and 2012 using the revised GWPs in Table A–1. The EPA will clearly label the information as a product of EPA analysis, conducted to reflect a consistent time-series of carbon dioxide equivalent (i.e., emissions from the start of the program using the amended GWPs). Under this approach, the EPA's analysis will supplement, not revise or supersede, the previously published data. This will allow the Agency and public to view and compare trends in GHG data, beginning with the first year of GHGRP reporting, using consistent GWPs and without placing any additional burden on reporters. See Section III.B.2 for additional information on the EPA's revised approach.

2. Summary of Comments and Responses—Republication of Emission Estimates for Prior Year Reports

This section summarizes the significant comments and responses related to EPA's proposal to publish recalculated emissions from 2010, 2011, and 2012 reporting years. See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to emissions recalculations for prior reporting years.

*Comment:* Several commenters requested that, if the EPA chooses to proceed with revising the $CO_2e$ emission estimates in annual reports for prior reporting years using the proposed revised GWP values, the EPA should pursue this through Option 2 as described in the proposal preamble (where the EPA would itself calculate the revised $CO_2e$ emissions), rather than mandating that reporters revise their prior reports. Many commenters preferred Option 2 because it would not place added burden on reporters to recalculate previously reported data. One commenter stated that Option 2 would enable the EPA to automatically revise $CO_2e$ emissions without the need for company review, pointing out that a programming modification would easily update emissions data universally without the need for responses from each individual facility and eliminate the time consuming reentry of data at the plant level. Another commenter insisted that the EPA must publish the revised estimates with a caveat explaining how the estimates were obtained and explaining that the emission values are not those submitted and certified by reporters.

One commenter suggested the EPA revise the emissions data (as described in Option 2) and then present it in the published database as a parallel metric, leaving the certified facility-reported data unchanged. The commenter explained that this approach would ensure that a facility's reported emission data appropriately remains the official emission report for that facility while creating a ''continuous'' emission series dating to reporting year 2010. Another commenter suggested including the revised estimates on FLIGHT and listing both the previous and new GWPs. The commenter noted that addressing the emissions in this way would eliminate the need to revise even more reports if the EPA decides to update the GWPs again in the future.

Many commenters opposed both options, asserting that retroactively revising data submitted in prior reports would undermine regulatory and business certainty. Commenters stated that it is inappropriate to require that emission estimates previously calculated in good faith be reassessed based on a revised rule. The commenters maintained that either option would create a substantial reporting burden without any real benefit. One commenter argued that

either option could have the unintended consequence of altering GHG mitigation strategies currently being deployed by facilities. Several commenters opposed recalculating prior reporting year emissions because these emissions are in the public domain, and the GWP values used to derive them were also used by sources for purposes of evaluating applicability of PSD and title V under the Tailoring Rule. Commenters argued that changing the emission totals that have already been published would also undermine transparency in the regulatory process and the public's confidence in the overall database.

Commenters also disagreed that these revisions would allow for the comparison of emission data submitted for those reporting years with data submitted for reporting year 2013 and future reporting years. Some commenters indicated that the EPA has neglected to consider other proposed significant changes that can affect the overall emission estimates, citing, for example, the proposal to increase the cover methane oxidation rates at landfills from 10 percent to up to 35 percent. The commenters contended that revised GHG emissions data will have little value if revisions address one change (e.g., GWP values) but not others (e.g., revised emission factors or oxidation rates). Another commenter emphasized the impacts of the retroactive application of changes on other EPA regulations as well as state programs such as California's AB 32 GHG reduction program. Commenters recommended that new GWPs, and in fact all revisions within the GHG Reporting Rule, be applied prospectively to future emission reports, contending that this is more logical from a legal, scientific, and workload perspective. Finally, no commenter supported Option 1.

*Response:* After reviewing the comments submitted by stakeholders, we have selected Option 2 as the best means of meeting the need for GHG emissions data that accurately reflect the relative effect of each GHG. Option 2 will allow the EPA to provide a complete, consistent data set for prior years with the amended GWPs, including reports submitted for facilities and suppliers that have ceased operations, for comparison to data reported for 2013 and future years without increasing the burden on reporters or revising previously submitted reports.

In response to the concerns raised by commenters, we emphasize that although we will recalculate the 2010 through 2012 $CO_2e$ values using the revised GHGs, we will not be making revisions to the annual reports submitted and certified by reporters to reflect the revised GWPs finalized in this rulemaking. We intend to publish the submitted and certified annual reports in FLIGHT and publish a version of the $CO_2e$ emissions and supply estimates for the reporting years 2010, 2011, and 2012 using the revised GWPs in Table A–1 separately. The EPA will clearly delineate data submitted to the EPA by reporters and data recalculated by EPA. The revised emission and supply estimates will be used to create a consistent time series of $CO_2e$ estimates using the amended GWPs. We may present the annual report totals and the revised $CO_2e$ estimates in parallel thru FLIGHT; however, any revised $CO_2e$ values published will be clearly identified with a caveat explaining how the revised $CO_2e$ values were calculated and the reason why the values were recalculated. As such, the dataset provided will be an analysis of the data submitted by reporters, and will not constitute changes to the annual reports. The certified 2010 through 2012 reports (excluding confidential business information) will continue to be made available to the public through our Web site and will reflect the data as reported and certified by the reporter.

This approach allows the EPA to publish revised emission and supply totals without increasing burden on reporters for the submittal of revised reports and allows for comparison of emissions on an individual facility basis from reporting years 2010 through 2012 with those published in 2013 and beyond. This revised $CO_2e$ data will provide a more accurate picture of facility-level emissions for each industry over time.

This approach also clarifies that the GWPs finalized in this rulemaking are only applied prospectively, and do not affect the applicability for reporters that was determined for prior years. The revised emission and supply totals for years 2010 through 2012 will be wholly separate from the published values supplied by reporters for annual reports that may be used by sources for purposes of evaluating applicability of under other GHG programs, such as the EPA's Tailoring Rule. As discussed in Section II.A.2.c of this preamble, applicability determinations and permits issued prior to the effective date of the revised Table A–1 will not be affected by the new GWPs. Therefore, the revised totals will not retroactively affect determinations of permitting applicability.

We disagree with the commenters' statement that the decision to recalculate $CO_2e$ values for 2010 through 2012 creates confusion, undermines regulatory or business certainty, or will alter GHG mitigation methods. No additional burden is placed on reporters since reporters are not required to resubmit reports for 2010 through 2012 reporting years. In the 2013 reporting year and subsequent years, reporters will use the revised GWP values in Table A–1 of subpart A to calculate emissions in $CO_2e$. In most cases, however, reporters use the e-GGRT webforms or spreadsheets that automatically calculate $CO_2e$ values based on the GHG emissions and supply data entered by the facility. Only facilities that use the XML schema for reporting will need to make revisions for the 2013 reporting year.

We note that the reported emissions of each individual GHG emitted by the facility or supplied by a supplier for reporting years 2010, 2011, and 2012 remain unchanged. Only the relative weighting of the impacts of each GHG are changed by revisions to the GWPs. Using consistent and up-to-date GWP values, reviewed and approved by the scientific community, enables us to better evaluate the relative impact of GHG emissions on global warming, make better informed decisions on future mitigation methods, and track emission trends.

Although the EPA is revising the GWPs and making other minor rule revisions in this final rule, none of these changes apply retroactively to reporters. The EPA is not requiring new reporters who became subject to reporting only as the result of changes in the GWP values to submit reports for previous reporting years. Nor are we requiring existing reporters to submit and certify revised annual reports for previous reporting years or review and certify revised $CO_2e$ values calculated by the EPA.

*Comment*: Although most commenters supported Option 2 (either outright or as compared to Option 1), many suggested that EPA provide an opportunity for reporting entities to review and provide comment on $CO_2e$ values recalculated by the EPA before those values are published. These commenters stated that review is important to avoid errors being made in the published data. Some commenters also stated that reporters should be given the option to voluntarily revise their previous annual reports themselves.

*Response:* The EPA intends to provide an opportunity for facilities to view their recalculated facility-level $CO_2e$ totals before publication. The Agency does not believe it will be useful to formally solicit comments on the recalculated GWPs. Because application

of the new GWPs will be a very simple recalculation that has no bearing on a facility's annual report, the EPA does not want to place any additional burden on reporters. However, if a reporter were to find an error, we would as always welcome feedback through our Help Desk. We do not plan to make a formal solicitation for comment from reporters prior to publication of the recalculated $CO_2e$ emissions and supply because these republished values will be clearly labeled as the results of EPA analysis to avoid their confusion with the certified emissions reports submitted by facilities. The EPA will review the recalculated $CO_2e$ values to ensure they are accurate before making them available to the public. We have decided not to allow reporters to submit revised certified reports for reporting years 2010, 2011, and 2012 with $CO_2e$ values calculated using the revised GWPs. Based on the comments we received on Option 1, we consider it unlikely that many reporters would voluntarily revise their 2010 through 2012 reports, and to allow a few reporters to do so would be confusing to the public when reviewing non-CBI versions of the annual reports published on our Web site.

## IV. Confidentiality Determinations

### *A. Final Confidentiality Determinations for New and Revised Data Elements*

The EPA received only supportive comments on the proposed confidentiality determinations, and is finalizing the confidentiality determinations as proposed for all but 2 of the new and substantially revised data elements that were proposed. The EPA is not finalizing two proposed data elements: one in subpart AA, annual production of paper products exiting the paper machine(s) prior to application of any off-machine coatings (40 CFR 98.276(k)(2) proposed) as discussed in Section II.N of this preamble; and one in subpart FF, amount of $CH_4$ routed to each destruction device (40 CFR 98.326(t) proposed) as discussed in Section II.Q of this preamble. As a result, the EPA is not finalizing category assignments or confidentiality determinations for these two data elements.

In addition, there are some data elements in subparts A, C, X, FF, HH, NN, and TT that have been clarified since proposal, although the same information will be collected. These data elements and how they have been clarified in the final rule are listed in the following table. Because the information to be collected has not changed since proposal, we are finalizing the proposed confidentiality determinations for these data elements as proposed (see Table 3 of this preamble).

TABLE 3—REVISED DATA ELEMENTS WITH FINAL CATEGORY ASSIGNMENT AND CONFIDENTIALITY DETERMINATION

| Citation | Data category assigned to during proposal | Data element description, as proposed | Data element description, as finalized |
|---|---|---|---|
| 40 CFR 98.3(c)(1) (proposed); 40 CFR 98.3(c)(1) (finalized). | Facility and Unit Identifier Information. | If a facility does not have a physical street address, then the facility must provide the latitude and longitude representing the location of facility operations in decimal degree format. | If the facility does not have a physical street address, then the facility must provide the latitude and longitude representing the geographic centroid or center point of facility operations in decimal degree format. |
| 40 CFR 98.3(c)(13) (proposed); 40 CFR 98.3(c)(13) and (e.g., annual operation hours of the gas collection system (98.346(i)(7)), 40 CFR 98.36(b)(11), 40 CFR 98.36 (c) (1)(xi), 40 CFR 98.36 (c)(2)(x), 40 CFR 98.36 (c)(3)(x), 40 CFR 98.36 (d)(1)(x), 40 CFR 98.36 (d)(2)(ii)(J), and 40 CFR 98.36 (d)(2)(iii)(J) (finalized). | Facility and Unit Identifier Information. | For combustion units used to generate electricity for delivery to the grid, ORIS code for each combustion unit serving an electric generator. | An indication of whether the facility includes one or more plant sites that have been assigned a ''plant code'' (as defined under 40 CFR 98.6) by either the Department of Energy's (DOE) Energy Information Administration (EIA) or by the EPA's Clean Air Markets Division (CAMD). 40 CFR 98.36(b)(11): Plant code (as defined in 98.6), 40 CFR 98.36(c)(1)(xi): Plant code (as defined in 98.6), 40 CFR 98.36(c)(2)(x): Plant code (as defined in 98.6), 40 CFR 98.36(c)(3)(x): Plant code (as defined in 98.6), 40 CFR 98.36(d)(1)(x): Plant code (as defined in 98.6), 40 CFR 98.36(d)(2)(ii)(J): Plant code (as defined in 98.6), 40 CFR 98.36(d)(2)(iii)(J): Plant code (as defined in 98.6). |
| 40 CFR 98.246(b)(4) (proposed); 40 CFR 98.246(b)(4) finalized. | Emissions ..... | For each CEMS monitoring location that meets the conditions in paragraph (b)(2) or (3) of this section, provide an estimate based on engineering judgment of the fraction of the total $CO_2$ emissions that is attributable to the petrochemical process unit. | For each CEMS monitoring location that meets the conditions in paragraph (b)(2) or (3) of this section, provide an estimate based on engineering judgment of the fraction of the total $CO_2$ emissions that results from $CO_2$ directly emitted by the petrochemical process unit plus $CO_2$ generated by the combustion of off-gas from the petrochemical process unit. |

TABLE 3—REVISED DATA ELEMENTS WITH FINAL CATEGORY ASSIGNMENT AND CONFIDENTIALITY DETERMINATION—Continued

| Citation | Data category assigned to during proposal | Data element description, as proposed | Data element description, as finalized |
|---|---|---|---|
| 40 CFR 98.326(r)(2)(proposed); 40 CFR 98.326(r)(2) (finalized). | Unit/process Operating Characteristics That are Not Inputs to Emission Equations; Not Emissions Data and Not CBI. | Start date of each well and shaft ..... | Start date of each well, shaft, and vent hole. |
| 40 CFR 98.326(r)(2) (proposed); 40 CFR 98.326(r)(2) (finalized). | | Close date of each well and shaft ..... | Close date of each well, shaft, and vent hole. |
| 40 CFR 98.326(r)(3) (proposed); 40 CFR 98.326(r)(3) (finalized). | | Number of days each or shaft was in operation during the reporting year. | Number of days each well, shaft, or vent hole was in operation during the reporting year. |
| 40 CFR 98.466(h) (proposed); 40 CFR 98.466(h)(1) (finalized). | Emissions ..... | For landfills with gas collection systems, methane generation, using equation TT–6. | For landfills with gas collection systems, methane generation, adjusted for oxidation, calculated using equation TT–6. |
| 40 CFR 98.466(h) (proposed); 40 CFR 98.466(h)(2) (finalized). | Inputs to Emission Equations. | For landfills with gas collection systems, oxidation factor. | For landfills with gas collection systems, oxidation factor used in Equation TT–6. |
| 40 CFR 98.406(b)(7) ..... | Customer and Vendor Information. | LCDs: Annual volume in Mscf of natural gas delivered by the LDC to each sales or transportation customer's facility that received from the LDC deliveries equal to or greater than 460,000 Mscf during the calendar year, if known; otherwise, the annual volume in Mscf of natural gas delivered by the LDC to each meter registering supply equal to or greater than 460,000 Mscf during the calendar year. | LCDs: Annual volume in Mscf of natural gas delivered by the LDC to each large end-user as defined in 40 CFR 98.403(b)(2)(i). |
| 40 CFR 98.406(b)(12) ..... | Customer and Vendor Information. | LCDs: Meter number for each end-user reported in paragraph (b)(7). | LCDs: Meter number for each large end-user reported in paragraph (b)(7). |
| 40 CFR 98.406(b)(12) ..... | Customer and Vendor Information. | LCDs: Whether the quantity of natural gas reported in paragraph (b)(7) is the total quantity delivered or the quantity delivered to a specific meter. | LCDs: Whether the quantity of natural gas reported in paragraph (b)(7) is the total quantity delivered or the quantity delivered to a large end-user's facility, or the quantity delivered to a specific meter located at the facility. |

In the proposed rule, the EPA assigned thirteen proposed new data elements to the inputs to emission equations data category and received no comment on the proposed category assignments. As discussed above, one proposed new data element, from subpart FF, which was proposed to be assigned to the inputs to emission equations category is no longer included in this action. Additionally, as discussed in Section II.R of this preamble, the final revision to 40 CFR 98.346(i) includes three more new data elements than were proposed in subpart HH. The current rule had assumed only one measurement location and two possible destruction devices and therefore required reporting of only the operating hours for the ''primary'' and ''back-up'' destruction devices and a single value for destruction efficiency and methane recovery using Equation HH–4, all of which were categorized as inputs to emission equations. With these final revisions, the EPA is now requiring facilities to report the number of destruction devices and the operating hours and destruction efficiency for each device associated with a given measurement location (40 CFR 98.346(i)(5) and (7)). The EPA is also finalizing an amendment that methane recovery calculated using Equation HH–4 be reported separately for each measurement location (40 CFR 98.346(i)(6)). Because the three additional data elements are the same type of information as had been collected previously, the only difference being that they are now collected by measurement location, the EPA similarly assigns them to the inputs to emission equations data category in the final rule. As a result, there are now a total of 15 new data elements assigned to the inputs to emission equations category.

The EPA had previously expressed an intent to conduct an ''in-depth evaluation of the potential impact from the release of inputs to equations'' (76FR 53057 and 53060, August 25, 2011); (77 FR 48072, August 13, 2012). We conducted an evaluation of these fifteen new inputs following the process outline in the memorandum ''Process for Evaluating and Potentially Amending Part 98 Inputs to Emission Equations'' (Docket Id. No. EPA–HQ–OAR–2010–0929). This evaluation is summarized in the memorandum ''Summary of Evaluation of 'Inputs to

Emission Equations' Data Elements Added with the 2013 Revisions to the Greenhouse Gas Reporting Rule.'' (See Docket Id. No. EPA–HQ–OAR–2012–0934.)

Please see the memorandum titled ''Final data category assignments and confidentiality determinations for new and substantially revised data elements in the '2013 Revisions to the Greenhouse Gas Reporting Rule and Confidentiality Determinations for New or Substantially Revised Data Elements' '' (''Confidentiality Determinations Memorandum'') in Docket Id. No. EPA–HQ–OAR–2012–0934 for a list of the new or substantially revised data elements, their final category assignments, and their confidentiality determinations (whether categorical or individual) except for those assigned to the inputs to equations category.

*B. Public Comments on the Proposed Confidentiality Determinations and Responses to Public Comment*

The EPA is finalizing all confidentiality determinations as they were proposed. Please refer to the preamble to the proposed rule (77 FR 63570) for additional information regarding the proposed confidentiality determinations. For comments and responses regarding confidentiality determinations for new and revised data elements, please refer to the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934.

## V. Impacts of the Final Rule

*A. Impacts of the Final Amendments Due to Revised Global Warming Potentials*

This section of the preamble examines the costs and economic impacts of the final rulemaking and the estimated economic impacts of the rule on affected entities, including estimated impacts on small entities.

As discussed in the proposed rule, the amendments to Table A–1 of Part 98 may affect both the number of facilities required to report under Part 98 and the quantities of GHGs reported. This is because the GWPs in Table A–1 are used to calculate emissions (or supply) of GHGs in $CO_2e$ for determination of whether a facility meets a $CO_2e$-based threshold and is required to report and to calculate total facility emissions for submittal in the annual report. The amendments to Table A–1 include adopting GWPs that generally are higher than the values currently in the table and will result in higher reported emissions of $CO_2e$ for facilities that emit compounds for which the revised GWP is greater. In some cases, this will increase the number of facilities required to report under Part 98 and the total emissions reported for these facilities.

The EPA received several comments on the impacts of the proposed rule. Specifically, we received comments stating that EPA significantly underestimated both the number of newly subject subpart HH MSW Landfills and the added costs of compliance imposed on both new and existing reporters, who are affected by the increase in the GWP for methane. As a result of these comments, the EPA has revised the impacts analysis for subpart HH, Municipal Landfills. The EPA has also updated the impacts assessment to calculate the total emissions increase from all reporters using 2011 reported data that became available following the publication of the proposed rule. In the proposed rule, the impacts assessment for the subparts that began reporting in RY 2011 relied on information from the EPA's Economic Impacts Analyses and technical support documents for each of those subparts from the final Part 98. The new data is based on emissions estimates and data submitted in 2011 annual reports and is more accurate for the purposes of calculating the impacts from this final rule. We have also revised the analysis to exclude the 26 additional fluorinated GHGs that were proposed to be included in Table A–1, as we are not finalizing GWPs for these compounds in this rulemaking (see Section I.D of this preamble). Although some commenters requested that the impacts analysis should include the costs associated with implementation issues related to other EPA programs (e.g., EPA's Tailoring Rule), we have determined that it is not appropriate to include these impacts under this Part 98 rulemaking. See Section V.C of this preamble for the EPA's response to these comments.

The final amendments to Table A–1 will result in a collective increase in annual reported emissions from all subparts of more than 79 million metric tons $CO_2e$ (a 1.1 percent increase in existing emissions), which the EPA has concluded more accurately reflects the estimated radiative forcing from the emissions reported under Part 98. The increase includes 4.8 million metric tons $CO_2e$ from an estimated 184 additional facilities that may be newly required to report under Part 98 based on the revised GWPs. The number of new reporters estimated, the estimated increase in emissions or supply from existing reporters (reporters who submitted 2010 and 2011 reports) and new reporters, and the estimated total change in source category emissions or supply for each subpart are summarized in the memorandum ''Assessment of Emissions and Cost Impacts of 2013 Revisions to the Greenhouse Gas Reporting Rule and Confidentiality Determinations for New or Substantially Revised Data Elements'' (hereinafter referred to as ''Impacts Analysis'') (see Docket Id. No. EPA–HQ–OAR–2012–0934).

Additional reporters are expected to report under subparts I, W, HH, II, OO, and TT due to an increase in the number of facilities exceeding the $CO_2e$ threshold. The majority of these additional reporters are be expected from subpart W, Petroleum and Natural Gas Systems, and subpart HH, Municipal Solid Waste Landfills. There are no expected additional reporters from the remaining subparts. The revisions do not reduce the number of reporters that meet $CO_2e$ thresholds for any subpart. A detailed analysis of the impacts for each subpart, including the number of additional reporters expected, the quantities of annual GHGs reported, and the compliance costs for expected additional reporters, is included in the Impacts Analysis for the final rule (see Docket Id. No. EPA–HQ–OAR–2012–0934).

The total cost of compliance for the additional reporters is expected to be $2.2 million for the first year and $1.3 million per year for subsequent years. The annual costs for the additional reporters is an approximate increase of 1.3 percent above the existing reporters cost of compliance with Part 98. The costs of the final amendments and the associated methodology are summarized in Section V.A.2 of this preamble.

1. How were the number of reporters and the change in annual emissions or supply estimated?

As in the proposed rule, the EPA evaluated the number of reporters affected by the final amendments by examining the 2010 and 2011 reporters that are already required to report under Part 98. For the number of affected facilities, the EPA examined available e–GGRT data from the 2010 and 2011 reporting years and summary data that were developed to support the existing Part 98 to determine the number of existing affected facilities. We then evaluated the number of additional facilities that are required to report under each subpart by determining what additional facilities could exceed Part 98 source category thresholds, using the criteria presented in the 2013 Revisions proposal (see 78 FR 19841, April 2, 2013). The subparts that could have new reporters as a result of the changes to

Table A–1 are subparts I, W, HH, II, OO, and TT. We identified the number of additional reporters expected under each subpart following the methodology outlined in the proposed rule (78 FR 19841).

The EPA determined the estimated increases in reported emissions for each subpart by examining the available data from facilities that submitted an annual report for reporting year 2011. For these reporters, we estimated the increase in calculated emissions from each facility by adjusting the reported GHG mass emissions to $CO_2e$ using the proposed AR4 GWPs. We also estimated the increase in emissions that would result from additional reporters in each subpart expected to exceed the source category threshold. For those facilities, the available source-specific emissions data for the expected new reporters was calculated in terms of $CO_2e$ and the estimated emissions were included in the total source category emissions. Additional information on the EPA's analysis of the estimated number of reporters and the increase in reported $CO_2e$ for each subpart is in the Impacts Analysis for the final rule (see Docket Id. No. EPA–HQ–OAR–2012–0934).

2. How were the costs of this final rule estimated?

The compliance costs associated with the final amendments were determined for those additional reporters who are required to submit an annual report under Part 98. The total compliance costs for additional reporters are estimated to be $2.2 million for the first year and $1.3 million for subsequent years (2011 dollars).

Costs for additional reporters are summarized in Table 4 of this preamble, which presents the first-year and subsequent-year costs for each source category. To estimate the cost impacts for additional reporters, the EPA used the same methodology from the 2013 Revisions proposal. In addition to the costs for new reporters, the EPA estimated costs for closed landfills, or landfills expected to close within the next ten years, that would have an extended number of years of required reporting due to the increase in the GWP for methane. The cost for these additional years of reporting is included in Table 4 of this preamble. Costs are not included for landfills that were closed prior to January 1, 2013, have not previously reported under Part 98, and who generated less than 1,190 metric tons of $CH_4$ in the 2010, 2011, 2012 and 2013 reporting years. Landfills meeting these conditions are not required to report per the final revisions to subpart HH applicability (see Section II.R of this preamble for additional information).

TABLE 4—COST IMPACTS OF FINAL AMENDMENTS FOR ADDITIONAL REPORTERS

| Subpart | Number of additional reporters due to revised GWP | Incremental cost impact for additional reporters ($/yr for first year) | Incremental cost impact for additional reporters ($/yr for subsequent years) |
|---|---|---|---|
| I—Electronics Manufacturing | 4 | 129,500 | 237,000 |
| W—Petroleum & Natural Gas Systems | 99 | 1,648,000 | 772,000 |
| HH—Municipal Solid Waste Landfills | 57 | 246,000 | 182,200 |
| II—Industrial Wastewater | 2 | 10,800 | 10,500 |
| OO—Industrial GHG Suppliers | 3 | 13,100 | 10,000 |
| TT—Industrial Waste Landfills | 19 | 112,000 | 98,050 |
| Total | 184 | 2,195,400 | 1,316,750 |

[a] Subpart HH cost impact includes the reporting costs for 43 closed landfills that will exit the reporting program later than expected. Similarly, subpart TT cost impact includes the cost for 8 closed facilities.

For existing reporters that have submitted an annual report for reporting year 2010 or 2011, there will be no significant cost impacts resulting from the proposed amendments to Table A–1; using the revised GWPs does not affect the cost of monitoring and recordkeeping and does not materially affect the cost for calculating emissions for these facilities. See the Impacts Analysis (Docket Id. No. EPA–HQ–OAR–2012–0934) for more details.

*B. What are the impacts of the other amendments and revisions in this final rule?*

There are no other changes from proposed rule to the impacts from the remaining amendments and revisions in this final rule. This final rule continues to include clarifications to terms and definitions for certain emission equations, simplifications to calculation methods and data reporting requirements, or corrections for consistency between provisions within a subpart or between subparts in Part 98. These amendments do not fundamentally affect the applicability, monitoring requirements, or data collected and reported, or increase the recordkeeping and reporting burden associated with Part 98. Additionally, the final confidentiality determinations for new or substantially revised data elements do not affect whether and how data are reported and therefore, do not impose any additional burden on sources. See the EPA's full analysis of the additional impacts of the corrections, clarifying, and other amendments in the Impacts Analysis in Docket Id. No. EPA–HQ–OAR–2012–0934).

*C. Summary of Comments and Responses Regarding Impacts*

This section summarizes the significant comments and responses related to the impacts and burden of the proposed revisions. See the comment response document in Docket Id. No. EPA–HQ–OAR–2012–0934 for a complete listing of all comments and responses related to the impacts of this rulemaking.

*Comment:* Several commenters argued that the proposed rule does not calculate the complete cost of amending Table A–1, stating that the proposal merely estimates the costs that would be incurred by facilities that become subject to the Reporting Rule due to the amended GWP values. The commenters explained that the EPA should also calculate the costs incurred by facilities that become major sources of GHGs as a result of the amended GWP values and solicit public comment on the new cost calculations. The commenters asserted that the costs of performing a PSD review and obtaining a title V permit are substantial, and that the costs of obtaining a synthetic minor permit, while lower, are not insignificant. In

addition, commenters pointed out that some projects will be delayed or modified because of the requirement to obtain a permit before commencing construction, and that costs are especially significant in cases where a company planned and designed a project with the expectation that the facility would be a minor source for purposes of PSD, but must now conduct a PSD review because the facility is a major source under the new GWP values. One commenter stated that these added burdens are unwarranted, particularly since the added burdens are not a response to any increase in emissions. Other commenters maintained that it is insufficient for the EPA to simply state that EPA will work with permitting authorities and other stakeholders as necessary to provide guidance, that the EPA must provide some meaningful analysis of the impacts on these changes on regulators and industry under other affected regulatory programs, and that issues and concerns needing guidance should be addressed through public comment before promulgation of the final rule.

*Response:* The EPA disagrees with commenters that the Impacts Analysis for the GHG Reporting Rule must include the costs incurred by facilities that become major sources of GHGs as a result of the amended GWP values. The cost impacts and burden associated with exceeding permitting thresholds were analyzed under the Tailoring Rule. Even though the Tailoring Rule analysis was based on the GWP values that were effective at the time of the analysis (from the 2009 GHG Reporting Rule), we do not believe that the amended GWP values would significantly change the Tailoring Rule analysis and the overall conclusions on permitting burden relief reached in terms of establishing thresholds for GHG permitting.

With regard to the commenters' suggestion that some projects will be delayed or modified because of the amended GWP values, the EPA believes that permit applicants who may be potentially impacted by the amended GWP changes have been made aware of the anticipated GWP changes through the notice and comment regulatory process of amending Part 98. The effects of the updates to Table A–1 on the Tailoring Rule were addressed in the Response to Public Comments on the Tailoring Rule (see Docket Id. No. EPA–HQ–OAR–2009–0517–19181, p. 101): ''Any changes to Table A–1 of the mandatory GHG reporting rule regulatory text must go through an appropriate notice-and-comment regulatory process. . . . the lead time for adopting changes to that rule will provide a transition time to address implementation concerns raised by commenters.''

As noted in Section II.A.2.c of this preamble, to the extent that a Table A–1 amendment raises permitting implementation questions or concerns, the EPA will work with permitting authorities and other stakeholders as necessary to provide guidance on their issues and concerns.

*Comment:* Several comments stated that the EPA did not accurately assess the impact of the GWP revisions on MSW landfills. Commenters indicated that the EPA significantly underestimated both the number of newly subject subpart HH MSW Landfills and the added costs of compliance imposed by these changes on both new and existing reporters. The commenters disputed the EPA's conclusion in the Impacts Analysis accompanying the proposal that no closed landfills would be affected by the change in GWPs. According to commenters, several closed landfills with methane generations between 21,000 and 24,999 metric tons/year $CO_2e$ could exceed the threshold due to the proposed revision of the GWP for methane. One commenter claimed that, although emissions from these landfills will steadily decline, they could be required to report for at least three to five years as a result of the revised GWP for methane, and would thus face a significant impact. Commenters also pointed out that this situation is also likely to arise for small municipalities that own closed facilities.

Commenters also stated that the EPA failed to recognize that revising GWPs will delay the date by which low-emitting MSW landfills can exit the reporting program. They explained that while the proposal Impacts Analysis estimated methane generation at a closed landfill decreases 18% in 5 years, an increase in GWP from 21 to 25 will increase modeled emissions by 20% and will therefore delay exit from the reporting program obligations by more than 5 years.

Commenters also asserted that EPA underestimated the cost of complying with the proposed amended reporting requirements under subpart HH. They stated that, based on industry reporting experience, they believe actual annual costs to comply with the monitoring recordkeeping and reporting requirements are four to five times higher than the EPA estimates in Table 11 of the proposal preamble and Tables 4–1 and 6–16 of the Impacts Analysis, which state the incremental annual cost impact for new subpart HH reporters is $309,700 (or $5,434 per facility) for the initial year of reporting and $137,500 (or $2,413 per site) in subsequent years of reporting (2011 US Dollars). Two commenters attested that data they had submitted to the EPA previously on ongoing reporting showed that the annual cost per landfill for subsequent years of reporting ranged from $10,000 to $15,000 per site. One commenter stated that the EPA also did not account for the cost of responding to EPA questions raised on facility reports, which require a facility to respond within 45 days and may require corrections and report re-submittal.

*Response:* Upon further analysis, the EPA agrees that there may be closed landfills with methane generation between 21,000 and 24,999 metric tons/year $CO_2e$, and that under the proposed rule these closed facilities would be subject to new reporting requirements. For this reason, a provision has been included in the final amendments to subpart HH that specifically exempts landfills that did not accept waste on or after January 1, 2013 and had methane generation less than 1,190 metric tons of methane (25,000 $CO_2e$). See Section II.R of this preamble for additional discussion.

The EPA also agrees that the economic impact assessment for the changes to the GWP of methane did not include the cost that closed, or soon to be closed, landfills would incur due to the extended number of years that reporting will be required. In response to this comment, we have estimated that there are approximately 196 closed MSW landfills, and 233 open MSW landfills, expected to close within the next ten years, that will be required to submit reports for an additional 5 years. Of these facilities, we estimated there are 43 facilities that will incur one or more additional years of reporting within the next ten years. The average additional annual cost for these facilities is estimated at $37,360. The EPA has also made a similar estimate of costs for industrial landfills (subpart TT), and has concluded that there are eight facilities that may be required to report for one or more additional years within the next ten years. The annual average cost associated with these reports is $12,000. The details of these changes to the cost impact are available in the Impacts Analysis in Docket Id. No. EPA–HQ–OAR–2012–0934.

With regard to the comment that the EPA underestimated the cost to submit reports for all facilities and that the costs incurred by facilities are four to five times higher than the EPA originally estimated, this information was taken into consideration in the most recent Information Collection Request

(ICR) (see Docket Id. No. EPA–HQ–OAR–2012–0333) and no changes were made to the estimated cost to report based on the information submitted (see EPA's response to comments on the GHGRP renewal ICR, dated May 2013, in Docket Id. No. EPA–HQ–OAR–2012–0333). The major factor influencing the cost from both companies was the frequency of monitoring required for estimating emissions from Municipal Solid Waste Landfills (subpart HH). The EPA disagrees with the feedback provided. In making the cost estimates, the EPA assumes that the operators will pick the lowest cost operations for monitoring emissions. Part of this assumption includes that landfill operators will be visiting the landfills at least once a week under normal operation to check and maintain equipment. The majority of landfills in the U.S. are active and would not require additional visits to monitor emissions. We concluded, after evaluating comments about underestimating the reporting burden, that the Agency's methodology and assumptions used in the Economic Impact Analysis were sound and relied on the best available data. Therefore, it is reasonable of EPA to use the Economic Impact Analysis to estimate total cost burden on landfills affected by the changes to the revised GWP, and the Economic Impact Analysis provides a reasonable characterization of costs and adequate explanation of how the costs were estimated. As we discussed in Section VII of the final Part 98 preamble (74 FR 56362, October 30, 2009), the EPA collected and evaluated cost data from multiple sources, thoroughly reviewed the input received through public comments, and weighed the analysis against this input.

*Comment:* Some commenters asserted that any time the EPA changes factors to be used in estimating a facility's GHG emissions for reporting purposes (such as GWPs, fuel emission factors, or high heating values), companies have to expend substantial efforts to revise systems they have developed and put in place, often at considerable cost, to collect the required information, apply the GHG emission estimation methods the EPA requires, and consolidate and report GHG emission estimates to the EPA. They explained that in addition to imposing substantial burdens on businesses and public and private institutions, it also introduces the potential for errors every time existing reporting systems have to be modified. The commenters argued that the EPA is neglecting to account for the costs incurred by existing reporters to implement these changes.

One commenter contended that, if the primary use for GHG emissions reported under the GHGRP is for comparative purposes (i.e. determining trends in GHG emissions, comparing U.S. emissions to those of other countries, etc.), making relatively small revisions to the methods for calculating estimated GHG emissions is not going to produce a benefit that warrants the burden imposed on regulated facilities to adjust to those revisions. The commenter recommended that the EPA not promulgate future changes to GWPs, nor other changes to the methodologies for estimating GHG emissions in the Greenhouse Gas Reporting Rule, if the change is unlikely to produce more than a five percent change in estimated emissions.

*Response:* As the EPA stated in the preamble for the proposed amendments (78 FR 19802, April 2, 2013), the amendments reflect the EPA's engagement with reporters and stakeholders and our understanding of the technical challenges and burden associated with implementation of Part 98 provisions. The changes improve the GHGRP by clarifying compliance obligations and reducing confusion for reporters, improving the consistency of the data collected, and ensuring that data collected through the GHGRP is representative of industry and comparable to other inventories. The proposed changes simplify data collection and reporting for reporters and reduce the burden associated with implementing certain provisions of 40 CFR part 98. These clarifications and corrections do not fundamentally affect the applicability, monitoring requirements, or data collected and reported or increase the recordkeeping and reporting burden associated with Part 98. The EPA estimated the impacts of the corrections, clarifying, and other amendments in the Impacts Analysis in Docket Id. No. EPA–HQ–OAR–2012–0934 and determined that the impacts from these changes to each subpart was minimal. As such, the EPA has determined the amendments to the final rule do not present an undue cost burden on reporters.

## VI. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). This action (1) clarifies or changes specific provisions in the Greenhouse Gas Reporting Rule, including amending Table A–1 of Subpart A to incorporate revised GWPs from the IPCC AR4, and (2) finalizes confidentiality determinations for the reporting of new or substantially revised (i.e., requiring additional or different data to be reported) data elements contained in the final amendments. The EPA prepared an analysis of the potential compliance costs associated with the final amendments and amendments to revise global warming potentials in subpart A. This analysis is contained in the Impacts Analysis (see Docket Id. No. EPA–HQ–OAR–2012–0934). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. The total compliance costs for additional reporters are $1,316,700 ($2011). The highest costs are anticipated for 99 facilities affected by subpart W, Petroleum and Natural Gas Systems, ($772,000), 4 facilities affected by subpart I, Electronics Manufacturing ($237,000), and 57 facilities affected by subpart HH, Municipal Solid Waste Landfills ($182,200). New facilities required to report under subparts II, OO, and TT incur a combined cost of $118,550. The final confidentiality determinations for new and substantially revised data elements do not increase the existing compliance costs. The compliance costs associated with the final amendments are less than the significance threshold of $100 million per year. The compliance costs for individual facilities are not expected to impose a significant economic burden.

### *B. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements for 40 CFR part 98 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and has assigned OMB control number 2060–0629, ICR 2300.10. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. The revisions in this final action result in a small increase in burden, and the ICR will be modified to reflect this burden change.

This action finalizes amended GWP values in subpart A and other corrections and harmonizing revisions, and finalizes confidentiality determinations for the reporting of new or substantially revised (i.e., requiring additional or different data to be

reported) data elements contained in the final amendments. These final amendments and confidentiality determinations do not make any substantive changes to the reporting requirements in any of the subparts for which amendments are being finalized. The final amendments to subpart A include revision of existing GWPs in Table A–1 of subpart A. As discussed in Section V of this preamble, the final amendments could affect the total number of facilities reporting under Part 98 and increase the collective annual emissions or supply reported. The EPA prepared an analysis of the compliance costs associated with the final amendments to Table A–1 in the Impacts Analysis (see Docket Id. No. EPA–HQ–OAR–2012–0934).

Other amendments to subpart A include adding requirements that provide reporters instruction regarding reporting of location, ownership, and facility identification (i.e., reporting of plant codes). The remaining changes also include revising and adding definitions. The revisions are clarifications or require reporting of information that facilities are expected to have readily available (e.g., latitude and longitude of the facility, unit-level and configuration-level ''plant code''), and are not expected to result in significant burden for reporters.

The amendments to the reporting requirements in the source category-specific subparts generally do not change the nature of the data reported and are not anticipated to result in significant burden for reporters. For example, several of the amendments are clarifications or corrections to existing reporting requirements. For example, for subpart H, the EPA is requiring reporting of annual, facility-wide cement production instead of monthly, kiln-specific cement production for facilities that use a CEMS to measure $CO_2$ emissions. Because facilities are already expected to track facility-wide cement production for budgeting purposes, we do not expect this revision to result in any additional burden for cement production facilities. In some cases we are including reporting requirements for data that are already collected by reporters. For instance, for subpart RR, the EPA is adding a reporting requirement for facilities to report the standard or method used to calculate the mass or volume of contents in containers that is redelivered to another facility without being injected into the well. The new data element does not require additional data collection or monitoring from reporters, and is not a significant change.

The EPA is also finalizing changes that would reduce the reporting burden. For example, for subpart BB (Silicon Carbide Production), the EPA is removing the requirement for facilities to report $CH_4$ emissions from silicon carbide process units or furnaces. Additionally, the EPA is amending subpart BB such that facilities would calculate and report $CO_2$ emissions for all process units and furnaces combined, instead of each process unit or production furnace. We expect that both of these major changes will reduce the reporting burden for facilities subject to subpart BB.

Additional changes to the reporting requirements in each subpart are detailed in the Impacts Analysis (see Docket Id. No. EPA–HQ–OAR–2012–0934).

*C. Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are small businesses. We have determined that up to 80 small municipal solid waste landfills, representing up to a 1 percent increase in regulated businesses in this industry, will experience an impact of 0.02 to 0.6 percent of revenues; up to 3 suppliers of industrial GHGs, representing up to a 0.85 percent increase in regulated businesses in this industry, will experience an impact of 0.02 to 0.14 percent of revenues; and that up to 27 industrial waste landfills (primarily co-located with food processing facilities), representing up to a 7.3 percent increase in regulated businesses in this industry, will experience an impact of 0.01 to 0.48 percent of revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, the EPA nonetheless has tried to reduce the impact of Part 98 on small entities. For example, the EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. The EPA continues to conduct significant outreach on Part 98 and maintains an ''open door'' policy for stakeholders to help inform the EPA's understanding of key issues for the industries.

*D. Unfunded Mandates Reform Act (UMRA)*

The final rule amendments and confidentiality determinations do not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the final rule amendments and confidentiality determinations are not subject to the requirements of section 202 and 205 of the UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The final rule amends specific provisions in subpart A, General Provisions, to reflect global warming potentials that have been published by the IPCC. Also in this action, the EPA is revising specific provisions to provide clarity on what is to be reported. In some cases, the EPA has increased flexibility in the selection of methods used for calculating and monitoring GHGs. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

The final amendments and confidentiality determinations apply directly to facilities that directly emit greenhouses gases or that are suppliers of greenhouse gases. They do not apply to governmental entities unless the government entity owns a facility that

directly emits greenhouse gases above threshold levels (such as a landfill or large combustion device), so relatively few government facilities would be affected. Moreover, for government facilities that are subject to the rule, the final revisions will not have a significant cost impact. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, the EPA specifically solicited comment on the proposed action from State and local officials. The EPA carefully considered the comments received in developing this final rule, including providing regulatory flexibility for certain municipally-owned solid waste landfills under subpart HH.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The final amendments and confidentiality determinations apply directly to facilities that directly emit greenhouses gases or that are suppliers of greenhouse gases. They would not have tribal implications unless the tribal entity owns a facility that directly emits greenhouse gases above threshold levels (such as a landfill or large combustion device). Relatively few tribal facilities would be affected. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve any new technical standards, but allows for greater flexibility for reporters to use consensus standards where they are available. Therefore, the EPA did not consider the use of specific voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, (February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on January 1, 2014.

**List of Subjects 40 CFR Part 98**

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: November 15, 2013.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

## PART 98—MANDATORY GREENHOUSE GAS REPORTING

■ 1. The authority citation for part 98 continues to read as follows:

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

## Subpart A—[Amended]

■ 2. Section 98.3 is amended by:
■ a. Revising paragraph (c)(1).
■ b. Adding paragraphs (c)(11)(viii) and (c)(13).
■ c. Revising paragraphs (h)(4) and (j)(3)(ii).
■ d. Adding paragraphs (k) and (l).

The revisions and additions read as follows:

### § 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(c) * * *

(1) Facility name or supplier name (as appropriate), and physical street address of the facility or supplier, including the city, State, and zip code. If the facility does not have a physical street address, then the facility must provide the latitude and longitude representing the geographic centroid or center point of facility operations in decimal degree format. This must be provided in a comma-delimited ''latitude, longitude'' coordinate pair reported in decimal degrees to at least four digits to the right of the decimal point.

* * * * *

(11) * * *

(viii) The facility or supplier must refer to the reporting instructions of the

electronic GHG reporting tool regarding standardized conventions for the naming of a parent company.

* * * * *

(13) An indication of whether the facility includes one or more plant sites that have been assigned a ''plant code'' (as defined under § 98.6) by either the Department of Energy's Energy Information Administration or by the EPA's Clean Air Markets Division.

* * * * *

(h) * * *

(4) Notwithstanding paragraphs (h)(1) and (2) of this section, upon request by the owner or operator, the Administrator may provide reasonable extensions of the 45-day period for submission of the revised report or information under paragraphs (h)(1) and (2) of this section. If the Administrator receives a request for extension of the 45-day period, by email to an address prescribed by the Administrator prior to the expiration of the 45-day period, the extension request is deemed to be automatically granted for 30 days. The Administrator may grant an additional extension beyond the automatic 30-day extension if the owner or operator submits a request for an additional extension and the request is received by the Administrator at least 5 business days prior to the expiration of the automatic 30-day extension, provided the request demonstrates that it is not practicable to submit a revised report or information under paragraphs (h)(1) and (2) within 75 days. The Administrator will approve the extension request if the request demonstrates to the Administrator's satisfaction that it is not practicable to collect and process the data needed to resolve potential reporting errors identified pursuant to paragraphs (h)(1) or (2) of this section within 75 days.

* * * * *

(j) * * *

(3) * * *

(ii) Any subsequent extensions to the original request must be submitted to the Administrator within 4 weeks of the owner or operator identifying the need to extend the request, but in any event no later than 4 weeks before the date for the planned process equipment or unit shutdown that was provided in the original or most recently approved request.

* * * * *

(k) *Revised global warming potentials and special provisions for reporting year 2013.* This paragraph (k) applies to owners or operators of facilities or suppliers that first become subject to any subpart of part 98 solely due to an amendment to Table A–1 of this subpart.

(1) A facility or supplier that was not subject to any subpart of part 98 for reporting year 2012, but first becomes subject to any subpart of part 98 due to a change in the GWP for one or more compounds in Table A–1 of this subpart, Global Warming Potentials, is not required to submit an annual GHG report for reporting year 2013.

(2) A facility or supplier that is subject to a subpart of part 98 for reporting year 2012, but first becomes subject to any subpart of part 98 due to a change in the GWP for one or more compounds in Table A–1 of this subpart, is not required to include those subparts for which the facility is subject only due to the change in the GWP in the annual GHG report submitted for reporting year 2013.

(3) Starting on January 1, 2014, facilities or suppliers identified in paragraphs (k)(1) or (2) of this section must start monitoring and collecting GHG data in compliance with the applicable subparts of part 98 for which the facility is subject due to the change in the GWP for the annual greenhouse gas report for reporting year 2014, which is due by March 31, 2015.

(l) *Special provision for best available monitoring methods in 2014.* This paragraph (l) applies to owners or operators of facilities or suppliers that first become subject to any subpart of part 98 due to an amendment to Table A–1 of this subpart, Global Warming Potentials.

(1) *Best available monitoring methods.* From January 1, 2014 to March 31, 2014, owners or operators subject to this paragraph (l) may use best available monitoring methods for any parameter (e.g., fuel use, feedstock rates) that cannot reasonably be measured according to the monitoring and QA/QC requirements of a relevant subpart. The owner or operator must use the calculation methodologies and equations in the ''Calculating GHG Emissions'' sections of each relevant subpart, but may use the best available monitoring method for any parameter for which it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by January 1, 2014. Starting no later than April 1, 2014, the owner or operator must discontinue using best available methods and begin following all applicable monitoring and QA/QC requirements of this part, except as provided in paragraph (l)(2) of this section. Best available monitoring methods means any of the following methods:

(i) Monitoring methods currently used by the facility that do not meet the specifications of a relevant subpart.

(ii) Supplier data.

(iii) Engineering calculations.

(iv) Other company records.

(2) *Requests for extension of the use of best available monitoring methods.* The owner or operator may submit a request to the Administrator to use one or more best available monitoring methods beyond March 31, 2014.

(i) *Timing of request.* The extension request must be submitted to EPA no later than January 31, 2014.

(ii) *Content of request.* Requests must contain the following information:

(A) A list of specific items of monitoring instrumentation for which the request is being made and the locations where each piece of monitoring instrumentation will be installed.

(B) Identification of the specific rule requirements (by rule subpart, section, and paragraph numbers) for which the instrumentation is needed.

(C) A description of the reasons that the needed equipment could not be obtained and installed before April 1, 2014.

(D) If the reason for the extension is that the equipment cannot be purchased and delivered by April 1, 2014, supporting documentation such as the date the monitoring equipment was ordered, investigation of alternative suppliers and the dates by which alternative vendors promised delivery, backorder notices or unexpected delays, descriptions of actions taken to expedite delivery, and the current expected date of delivery.

(E) If the reason for the extension is that the equipment cannot be installed without a process unit shutdown, include supporting documentation demonstrating that it is not practicable to isolate the equipment and install the monitoring instrument without a full process unit shutdown. Include the date of the most recent process unit shutdown, the frequency of shutdowns for this process unit, and the date of the next planned shutdown during which the monitoring equipment can be installed. If there has been a shutdown or if there is a planned process unit shutdown between November 29, 2013 and April 1, 2014, include a justification of why the equipment could not be obtained and installed during that shutdown.

(F) A description of the specific actions the facility will take to obtain and install the equipment as soon as reasonably feasible and the expected date by which the equipment will be installed and operating.

(iii) Approval criteria. To obtain approval, the owner or operator must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by April 1, 2014. The use of best available methods under this paragraph (l) will not be approved beyond December 31, 2014.

■ 3. Section 98.6 is amended by:

■ a. Revising the definitions for ''Continuous bleed'', ''Degasification system'', and ''Intermittent bleed pneumatic devices''.

■ b. Adding the definition of ''Plant code'' in alphabetical order.

■ c. Revising the term ''Ventilation well or shaft'' to read ''Ventilation hole or shaft'' and revising the definition of the term.

■ d. Revising the definition of ''Ventilation system''.

The revisions and addition read as follows:

**§ 98.6 Definitions.**

* * * * *

*Continuous bleed* means a continuous flow of pneumatic supply natural gas to the process control device (*e.g.* level control, temperature control, pressure control) where the supply gas pressure is modulated by the process condition, and then flows to the valve controller where the signal is compared with the process set-point to adjust gas pressure in the valve actuator.

* * * * *

*Degasification system* means the entirety of the equipment that is used to drain gas from underground coal mines. This includes all degasification wells and gob gas vent holes at the underground coal mine. Degasification systems include gob and premine surface drainage wells, gob and premine in-mine drainage wells, and in-mine gob and premine cross-measure borehole wells.

* * * * *

*Intermittent bleed pneumatic devices* mean automated flow control devices powered by pressurized natural gas and used for automatically maintaining a process condition such as liquid level, pressure, delta-pressure and temperature. These are snap-acting or throttling devices that discharge all or a portion of the full volume of the actuator intermittently when control action is necessary, but does not bleed continuously.

* * * * *

*Plant code* means either of the following:

(1) The Plant ID code assigned by the Department of Energy's Energy Information Administration. The Energy Information Administration Plant ID code is also referred to as the ''ORIS code'', ''ORISPL code'', ''Facility ID'', or ''Facility code'', among other names.

(2) If a Plant ID code has not been assigned by the Department of Energy's Energy Information Administration, then plant code means a code beginning with ''88'' assigned by the EPA's Clean Air Markets Division for electronic reporting.

* * * * *

*Ventilation hole or shaft* means a vent hole or shaft employed at an underground coal mine to serve as the outlet or conduit to move air from the ventilation system out of the mine.

*Ventilation system* means a system that is used to control the concentration of methane and other gases within mine working areas through mine ventilation, rather than a mine degasification system. A ventilation system consists of fans that move air through the mine workings to dilute methane concentrations.

* * * * *

**§ 98.7 [Amended]**

■ 4. Section 98.7 is amended by removing and reserving paragraph (n).

■ 5. Table A–1 to Subpart A is revised to read as follows:

TABLE A–1 TO SUBPART A OF PART 98—GLOBAL WARMING POTENTIALS

[100-Year Time Horizon]

| Name | CAS No. | Chemical formula | Global warming potential (100 yr.) |
|---|---|---|---|
| Carbon dioxide | 124–38–9 | $CO_2$ | 1 |
| Methane | 74–82–8 | $CH_4$ | [a] 25 |
| Nitrous oxide | 10024–97–2 | $N_2O$ | [a] 298 |
| HFC–23 | 75–46–7 | $CHF_3$ | [a] 14,800 |
| HFC–32 | 75–10–5 | $CH_2F_2$ | [a] 675 |
| HFC–41 | 593–53–3 | $CH_3F$ | [a] 92 |
| HFC–125 | 354–33–6 | $C_2HF_5$ | [a] 3,500 |
| HFC–134 | 359–35–3 | $C_2H_2F_4$ | [a] 1,100 |
| HFC–134a | 811–97–2 | $CH_2FCF_3$ | [a] 1,430 |
| HFC–143 | 430–66–0 | $C_2H_3F_3$ | [a] 353 |
| HFC–143a | 420–46–2 | $C_2H_3F_3$ | [a] 4,470 |
| HFC–152 | 624–72–6 | $CH_2FCH_2F$ | 53 |
| HFC–152a | 75–37–6 | $CH_3CHF_2$ | [a] 124 |
| HFC–161 | 353–36–6 | $CH_3CH_2F$ | 12 |
| HFC–227ea | 431–89–0 | $C_3HF_7$ | [a] 3,220 |
| HFC–236cb | 677–56–5 | $CH_2FCF_2CF_3$ | 1,340 |
| HFC–236ea | 431–63–0 | $CHF_2CHFCF_3$ | 1,370 |
| HFC–236fa | 690–39–1 | $C_3H_2F_6$ | [a] 9,810 |
| HFC–245ca | 679–86–7 | $C_3H_3F_5$ | [a] 693 |
| HFC–245fa | 460–73–1 | $CHF_2CH_2CF_3$ | 1,030 |
| HFC–365mfc | 406–58–6 | $CH_3CF_2CH_2CF_3$ | 794 |
| HFC–43–10mee | 138495–42–8 | $CF_3CFHCFHCF_2CF_3$ | [a] 1,640 |
| Sulfur hexafluoride | 2551–62–4 | $SF_6$ | [a] 22,800 |
| Trifluoromethyl sulphur pentafluoride | 373–80–8 | $SF_5CF_3$ | 17,700 |
| Nitrogen trifluoride | 7783–54–2 | $NF_3$ | 17,200 |
| PFC–14 (Perfluoromethane) | 75–73–0 | $CF_4$ | [a] 7,390 |
| PFC–116 (Perfluoroethane) | 76–16–4 | $C_2F_6$ | [a] 12,200 |
| PFC–218 (Perfluoropropane) | 76–19–7 | $C_3F_8$ | [a] 8,830 |
| Perfluorocyclopropane | 931–91–9 | $C–C_3F_6$ | 17,340 |
| PFC–3–1–10 (Perfluorobutane) | 355–25–9 | $C_4F_{10}$ | [a] 8,860 |

TABLE A–1 TO SUBPART A OF PART 98—GLOBAL WARMING POTENTIALS—Continued

[100-Year Time Horizon]

| Name | CAS No. | Chemical formula | Global warming potential (100 yr.) |
|---|---|---|---|
| PFC–318 (Perfluorocyclobutane) | 115–25–3 | $C–C_4F_8$ | [a] 10,300 |
| PFC–4–1–12 (Perfluoropentane) | 678–26–2 | $C_5F_{12}$ | [a] 9,160 |
| PFC–5–1–14 (Perfluorohexane, FC–72) | 355–42–0 | $C_6F_{14}$ | [a] 9,300 |
| PFC–9–1–18 | 306–94–5 | $C_{10}F_{18}$ | 7,500 |
| HCFE–235da2 (Isoflurane) | 26675–46–7 | $CHF_2OCHClCF_3$ | 350 |
| HFE–43–10pccc (H–Galden 1040x, HG–11) | E1730133 | $CHF_2OCF_2OC_2F_4OCHF_2$ | 1,870 |
| HFE–125 | 3822–68–2 | $CHF_2OCF_3$ | 14,900 |
| HFE–134 (HG–00) | 1691–17–4 | $CHF_2OCHF_2$ | 6,320 |
| HFE–143a | 421–14–7 | $CH_3OCF_3$ | 756 |
| HFE–227ea | 2356–62–9 | $CF_3CHFOCF_3$ | 1,540 |
| HFE–236ca12 (HG–10) | 78522–47–1 | $CHF_2OCF_2OCHF_2$ | 2,800 |
| HFE–236ea2 (Desflurane) | 57041–67–5 | $CHF_2OCHFCF_3$ | 989 |
| HFE–236fa | 20193–67–3 | $CF_3CH_2OCF_3$ | 487 |
| HFE–245cb2 | 22410–44–2 | $CH_3OCF_2CF_3$ | 708 |
| HFE–245fa1 | 84011–15–4 | $CHF_2CH_2OCF_3$ | 286 |
| HFE–245fa2 | 1885–48–9 | $CHF_2OCH_2CF_3$ | 659 |
| HFE–254cb2 | 425–88–7 | $CH_3OCF_2CHF_2$ | 359 |
| HFE–263fb2 | 460–43–5 | $CF_3CH_2OCH_3$ | 11 |
| HFE–329mcc2 | 134769–21–4 | $CF_3CF_2OCF_2CHF_2$ | 919 |
| HFE–338mcf2 | 156053–88–2 | $CF_3CF_2OCH_2CF_3$ | 552 |
| HFE–338pcc13 (HG–01) | 188690–78–0 | $CHF_2OCF_2CF_2OCHF_2$ | 1,500 |
| HFE–347mcc3 (HFE–7000) | 375–03–1 | $CH_3OCF_2CF_2CF_3$ | 575 |
| HFE–347mcf2 | 171182–95–9 | $CF_3CF_2OCH_2CHF_2$ | 374 |
| HFE–347pcf2 | 406–78–0 | $CHF_2CF_2OCH_2CF_3$ | 580 |
| HFE–356mec3 | 382–34–3 | $CH_3OCF_2CHFCF_3$ | 101 |
| HFE–356pcc3 | 160620–20–2 | $CH_3OCF_2CF_2CHF_2$ | 110 |
| HFE–356pcf2 | 50807–77–7 | $CHF_2CH_2OCF_2CHF_2$ | 265 |
| HFE–356pcf3 | 35042–99–0 | $CHF_2OCH_2CF_2CHF_2$ | 502 |
| HFE–365mcf3 | 378–16–5 | $CF_3CF_2CH_2OCH_3$ | 11 |
| HFE–374pc2 | 512–51–6 | $CH_3CH_2OCF_2CHF_2$ | 557 |
| HFE–449s1 (HFE–7100) | 163702–07–6 | $C_4F_9OCH_3$ | 297 |
| Chemical blend | 163702–08–7 | $(CF_3)_2CFCF_2OCH_3$ | |
| HFE–569sf2 (HFE–7200) | 163702–05–4 | $C_4F_9OC_2H_5$ | 59 |
| Chemical blend | 163702–06–5 | $(CF_3)_2CFCF_2OC_2H_5$ | |
| Sevoflurane (HFE–347mmz1) | 28523–86–6 | $CH_2FOCH(CF_3)_2$ | 345 |
| HFE–356mm1 | 13171–18–1 | $(CF_3)_2CHOCH_3$ | 27 |
| HFE–338mmz1 | 26103–08–2 | $CHF_2OCH(CF_3)_2$ | 380 |
| (Octafluorotetramethy-lene) hydroxymethyl group | NA | $X-(CF_2)_4CH(OH)-X$ | 73 |
| HFE–347mmy1 | 22052–84–2 | $CH_3OCF(CF_3)_2$ | 343 |
| Bis(trifluoromethyl)-methanol | 920–66–1 | $(CF_3)_2CHOH$ | 195 |
| 2,2,3,3,3-pentafluoropropanol | 422–05–9 | $CF_3CF_2CH_2OH$ | 42 |
| PFPMIE (HT–70) | NA | $CF_3OCF(CF_3)CF_2OCF_2OCF_3$ | 10,300 |

[a] The GWP for this compound is different than the GWP in the version of Table A–1 to subpart A of part 98 published on October 30, 2009.

■ 6. Table A–6 is amended by removing the entry for 98.466(c)(1) and revising the entries for 98.346(d)(1), 98.346(e), 98.346(i)(5), 98.346(i)(7), and 98.466(d)(3) to read as follows:

TABLE A–6 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2013

| Subpart | Rule citation (40 CFR part 98) | Specific data elements for which reporting date is March 31, 2013 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2013) |
|---|---|---|
| * | * | * * * * |
| HH | 98.346(d)(1) | Only degradable organic carbon (DOC) value, and fraction of DOC dissimilated (DOCF) values. |
| * | * | * * * * |
| HH | 98.346(e) | Only fraction of $CH_4$ in landfill gas and methane correction factor (MCF) values. |
| * | * | * * * * |
| HH | 98.346(i)(5) | Only annual operating hours for the destruction devices located at the landfill facility, and the destruction efficiency for the destruction devices associated with that measurement location. |

TABLE A–6 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2013—Continued

| Subpart | Rule citation (40 CFR part 98) | Specific data elements for which reporting date is March 31, 2013 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2013) |
|---|---|---|
| * | * | * * * * |
| HH ..... | 98.346(i)(7) | Only surface area specified in Table HH–3, estimated gas collection system efficiency, and annual operating hours of the gas collection system for each measurement locations. |
| * | * | * * * * |
| TT ..... | 98.466(d)(3) | Only degradable organic carbon (DOCx) value for each waste stream used in calculations. |

**Table A–7 to Subpart A of Part 98 [Amended]**

■ 7. Table A–7 is amended by removing the entries for 98.256(o)(6) and 98.256(o)(7).

## Subpart C—[AMENDED]

■ 8. Section 98.33 is amended by adding paragraph (b)(1)(viii) and revising paragraphs (b)(3)(ii)(A) and (e)(1)(ii) to read as follows:

**§ 98.33 Calculating GHG emissions.**

* * * * *

(b) * * *

(1) * * *

(viii) May be used for the combustion of a fuel listed in Table C–1 if the fuel is combusted in a unit with a maximum rated heat input capacity greater than 250 mmBtu/hr (or, pursuant to § 98.36(c)(3), in a group of units served by a common supply pipe, having at least one unit with a maximum rated heat input capacity greater than 250 mmBtu/hr), provided that both of the following conditions apply:

(A) The use of Tier 4 is not required.

(B) The fuel provides less than 10 percent of the annual heat input to the unit, or if § 98.36(c)(3) applies, to the group of units served by a common supply pipe.

* * * * *

(3) * * *

(ii) * * *

(A) The use of Tier 1 or 2 is permitted, as described in paragraphs (b)(1)(iii), (b)(1)(v), (b)(1)(viii), and (b)(2)(ii) of this section.

* * * * *

(e) * * *

(1) * * *

(ii) The procedures in paragraph (e)(4) of this section.

* * * * *

■ 9. Section 98.36 is amended by:

■ a. Revising paragraph (b)(3).

■ b. Adding paragraphs (b)(11), (c)(1)(xi), (c)(2)(x), and (c)(2)(xi).

■ c. Revising the next to last sentence of paragraph (c)(3) introductory text.

■ d. Adding paragraphs (c)(3)(x), (d)(1)(x), (d)(2)(ii)(J), and (d)(2)(iii)(J).

The revisions and additions read as follows:

**§ 98.36 Data reporting requirements.**

* * * * *

(b) * * *

(3) Maximum rated heat input capacity of the unit, in mmBtu/hr.

* * * * *

(11) If applicable, the plant code (as defined in § 98.6).

(c) * * *

(1) * * *

(xi) If applicable, the plant code (as defined in § 98.6).

(2) * * *

(x) Reserved.

(xi) If applicable, the plant code (as defined in § 98.6).

(3) * * * As a second example, in accordance with § 98.33(b)(1)(v), Tier 1 may be used regardless of unit size when natural gas is transported through the common pipe, if the annual fuel consumption is obtained from gas billing records in units of therms or mmBtu. * * *

* * * * *

(x) If applicable, the plant code (as defined in § 98.6).

* * * * *

(d) * * *

(1) * * *

(x) If applicable, the plant code (as defined in § 98.6).

(2) * * *

(ii) * * *

(J) If applicable, the plant code (as defined in § 98.6).

(iii) * * *

(J) If applicable, the plant code (as defined in § 98.6).

* * * * *

■ 10. Table C–1 to Subpart C is revised to read as follows:

TABLE C–1 TO SUBPART C—DEFAULT $CO_2$ EMISSION FACTORS AND HIGH HEAT VALUES FOR VARIOUS TYPES OF FUEL

| Fuel type | Default high heat value | Default $CO_2$ emission factor |
|---|---|---|
| Coal and coke | mmBtu/short ton | kg $CO_2$/mmBtu |
| Anthracite | 25.09 | 103.69 |
| Bituminous | 24.93 | 93.28 |
| Subbituminous | 17.25 | 97.17 |
| Lignite | 14.21 | 97.72 |
| Coal Coke | 24.80 | 113.67 |
| Mixed (Commercial sector) | 21.39 | 94.27 |
| Mixed (Industrial coking) | 26.28 | 93.90 |
| Mixed (Industrial sector) | 22.35 | 94.67 |
| Mixed (Electric Power sector) | 19.73 | 95.52 |

TABLE C–1 TO SUBPART C—DEFAULT $CO_2$ EMISSION FACTORS AND HIGH HEAT VALUES FOR VARIOUS TYPES OF FUEL—Continued

| Fuel type | Default high heat value | Default $CO_2$ emission factor |
|---|---|---|
| Natural gas | mmBtu/scf | kg $CO_2$/mmBtu |
| (Weighted U.S. Average) | $1.026 \times 10^{-3}$ | 53.06 |
| Petroleum products | mmBtu/gallon | kg $CO_2$/mmBtu |
| Distillate Fuel Oil No. 1 | 0.139 | 73.25 |
| Distillate Fuel Oil No. 2 | 0.138 | 73.96 |
| Distillate Fuel Oil No. 4 | 0.146 | 75.04 |
| Residual Fuel Oil No. 5 | 0.140 | 72.93 |
| Residual Fuel Oil No. 6 | 0.150 | 75.10 |
| Used Oil | 0.138 | 74.00 |
| Kerosene | 0.135 | 75.20 |
| Liquefied petroleum gases (LPG) [1] | 0.092 | 61.71 |
| Propane [1] | 0.091 | 62.87 |
| Propylene [2] | 0.091 | 67.77 |
| Ethane [1] | 0.068 | 59.60 |
| Ethanol | 0.084 | 68.44 |
| Ethylene [2] | 0.058 | 65.96 |
| Isobutane [1] | 0.099 | 64.94 |
| Isobutylene [1] | 0.103 | 68.86 |
| Butane [1] | 0.103 | 64.77 |
| Butylene [1] | 0.105 | 68.72 |
| Naphtha (<401 deg F) | 0.125 | 68.02 |
| Natural Gasoline | 0.110 | 66.88 |
| Other Oil (>401 deg F) | 0.139 | 76.22 |
| Pentanes Plus | 0.110 | 70.02 |
| Petrochemical Feedstocks | 0.125 | 71.02 |
| Petroleum Coke | 0.143 | 102.41 |
| Special Naphtha | 0.125 | 72.34 |
| Unfinished Oils | 0.139 | 74.54 |
| Heavy Gas Oils | 0.148 | 74.92 |
| Lubricants | 0.144 | 74.27 |
| Motor Gasoline | 0.125 | 70.22 |
| Aviation Gasoline | 0.120 | 69.25 |
| Kerosene-Type Jet Fuel | 0.135 | 72.22 |
| Asphalt and Road Oil | 0.158 | 75.36 |
| Crude Oil | 0.138 | 74.54 |
| Other fuels—solid | mmBtu/short ton | kg $CO_2$/mmBtu |
| Municipal Solid Waste | 9.95 [3] | 90.7 |
| Tires | 28.00 | 85.97 |
| Plastics | 38.00 | 75.00 |
| Petroleum Coke | 30.00 | 102.41 |
| Other fuels—gaseous | mmBtu/scf | kg $CO_2$/mmBtu |
| Blast Furnace Gas | $0.092 \times 10^{-3}$ | 274.32 |
| Coke Oven Gas | $0.599 \times 10^{-3}$ | 46.85 |
| Propane Gas | $2.516 \times 10^{-3}$ | 61.46 |
| Fuel Gas [4] | $1.388 \times 10^{-3}$ | 59.00 |
| Biomass fuels—solid | mmBtu/short ton | kg $CO_2$/mmBtu |
| Wood and Wood Residuals (dry basis) [5] | 17.48 | 93.80 |
| Agricultural Byproducts | 8.25 | 118.17 |
| Peat | 8.00 | 111.84 |
| Solid Byproducts | 10.39 | 105.51 |

TABLE C–1 TO SUBPART C—DEFAULT $CO_2$ EMISSION FACTORS AND HIGH HEAT VALUES FOR VARIOUS TYPES OF FUEL—Continued

| Fuel type | Default high heat value | Default $CO_2$ emission factor |
|---|---|---|
| Biomass fuels—gaseous | mmBtu/scf | kg $CO_2$/mmBtu |
| Landfill Gas | $0.485 \times 10^{-3}$ | 52.07 |
| Other Biomass Gases | $0.655 \times 10^{-3}$ | 52.07 |
| Biomass Fuels—Liquid | mmBtu/gallon | kg $CO_2$/mmBtu |
| Ethanol | 0.084 | 68.44 |
| Biodiesel (100%) | 0.128 | 73.84 |
| Rendered Animal Fat | 0.125 | 71.06 |
| Vegetable Oil | 0.120 | 81.55 |

[1] The HHV for components of LPG determined at 60 °F and saturation pressure with the exception of ethylene.
[2] Ethylene HHV determined at 41 °F (5 °C) and saturation pressure.
[3] Use of this default HHV is allowed only for: (a) Units that combust MSW, do not generate steam, and are allowed to use Tier 1; (b) units that derive no more than 10 percent of their annual heat input from MSW and/or tires; and (c) small batch incinerators that combust no more than 1,000 tons of MSW per year.
[4] Reporters subject to subpart X of this part that are complying with § 98.243(d) or subpart Y of this part may only use the default HHV and the default $CO_2$ emission factor for fuel gas combustion under the conditions prescribed in § 98.243(d)(2)(i) and (d)(2)(ii) and § 98.252(a)(1) and (a)(2), respectively. Otherwise, reporters subject to subpart X or subpart Y shall use either Tier 3 (Equation C–5) or Tier 4.
[5] Use the following formula to calculate a wet basis HHV for use in Equation C–1: $HHV_w = ((100 - M)/100)*HHV_d$ where $HHV_w$ = wet basis HHV, M = moisture content (percent) and $HHV_d$ = dry basis HHV from Table C–1.

■ 11. Table C–2 to Subpart C is revised to read as follows:

TABLE C–2 TO SUBPART C—DEFAULT $CH_4$ AND $N_2O$ EMISSION FACTORS FOR VARIOUS TYPES OF FUEL

| Fuel type | Default $CH_4$ emission factor (kg $CH_4$/mmBtu) | Default $N_2O$ emission factor (kg $N_2O$/mmBtu) |
|---|---|---|
| Coal and Coke (All fuel types in Table C–1) | $1.1 \times 10^{-02}$ | $1.6 \times 10^{-03}$ |
| Natural Gas | $1.0 \times 10^{-03}$ | $1.0 \times 10^{-04}$ |
| Petroleum (All fuel types in Table C–1) | $3.0 \times 10^{-03}$ | $6.0 \times 10^{-04}$ |
| Fuel Gas | $3.0 \times 10^{-03}$ | $6.0 \times 10^{-04}$ |
| Municipal Solid Waste | $3.2 \times 10^{-02}$ | $4.2 \times 10^{-03}$ |
| Tires | $3.2 \times 10^{-02}$ | $4.2 \times 10^{-03}$ |
| Blast Furnace Gas | $2.2 \times 10^{-05}$ | $1.0 \times 10^{-04}$ |
| Coke Oven Gas | $4.8 \times 10^{-04}$ | $1.0 \times 10^{-04}$ |
| Biomass Fuels—Solid (All fuel types in Table C–1, except wood and wood residuals) | $3.2 \times 10^{-02}$ | $4.2 \times 10^{-03}$ |
| Wood and wood residuals | $7.2 \times 10^{-03}$ | $3.6 \times 10^{-03}$ |
| Biomass Fuels—Gaseous (All fuel types in Table C–1) | $3.2 \times 10^{-03}$ | $6.3 \times 10^{-04}$ |
| Biomass Fuels—Liquid (All fuel types in Table C–1) | $1.1 \times 10^{-03}$ | $1.1 \times 10^{-04}$ |

Note: Those employing this table are assumed to fall under the IPCC definitions of the ''Energy Industry'' or ''Manufacturing Industries and Construction''. In all fuels except for coal the values for these two categories are identical. For coal combustion, those who fall within the IPCC ''Energy Industry'' category may employ a value of 1g of $CH_4$/mmBtu.

## Subpart E—[AMENDED]

■ 12. Section 98.53 is amended by:

■ a. Revising paragraph (b)(3) and paragraph (d) introductory text.

■ b. Revising paragraph (e) and Equation E–2 in paragraph (e).

■ c. Revising the parameters ''DF'' and ''AF'' of Equation E–3a in paragraph (g)(1).

■ d. Revising the parameters ''$DF_1$'', ''$AF_1$'', ''$DF_2$'', ''$AF_2$'', ''$DF_N$'', and ''$AF_N$'' of Equation E–3b in paragraph (g)(2).

■ e. Revising the parameters ''$DF_N$'', ''$AF_N$'', and ''$FC_N$'' of Equation E–3c in paragraph (g)(3).

The revisions read as follows:

**§ 98.53 Calculating GHG emissions.**

* * * * *

(b) * * *

(3) You must measure the adipic acid production rate during the test and calculate the production rate for the test period in tons per hour.

* * * * *

(d) If the adipic acid production unit exhausts to any $N_2O$ abatement technology ''N'', you must determine the destruction efficiency according to paragraphs (d)(1), (d)(2), or (d)(3) of this section.

* * * * *

(e) If the adipic acid production unit exhausts to any $N_2O$ abatement technology ''N'', you must determine the annual amount of adipic acid produced while $N_2O$ abatement technology ''N'' is operating according to § 98.54(f). Then you must calculate the abatement factor for $N_2O$ abatement technology ''N'' according to Equation E–2 of this section.

$$AF_N = \frac{P_{z,N}}{P_z} \quad \text{(Eq. E-2)}$$

* * * * *

(g) * * *

(1) * * *

* * * * *

DF = Destruction efficiency of $N_2O$ abatement technology ''N'' (decimal fraction of $N_2O$ removed from vent stream).

AF = Abatement utilization factor of $N_2O$ abatement technology ''N'' (decimal fraction of time that the abatement technology is operating).

* * * * *

(2) * * *

* * * * *

$DF_1$ = Destruction efficiency of $N_2O$ abatement technology 1 (decimal fraction of $N_2O$ removed from vent stream).

$AF_1$ = Abatement utilization factor of $N_2O$ abatement technology 1 (decimal fraction of time that abatement technology 1 is operating).

$DF_2$ = Destruction efficiency of $N_2O$ abatement technology 2 (decimal fraction of $N_2O$ removed from vent stream).

$AF_2$ = Abatement utilization factor of $N_2O$ abatement technology 2 (decimal fraction of time that abatement technology 2 is operating).

$DF_N$ = Destruction efficiency of $N_2O$ abatement technology ''N'' (decimal fraction of $N_2O$ removed from vent stream).

$AF_N$ = Abatement utilization factor of $N_2O$ abatement technology ''N'' (decimal fraction of time that abatement technology N is operating).

* * * * *

(3) * * *

* * * * *

$DF_N$ = Destruction efficiency of $N_2O$ abatement technology ''N'' (decimal fraction of $N_2O$ removed from vent stream).

$AF_N$ = Abatement utilization factor of $N_2O$ abatement technology ''N'' (decimal fraction of time that the abatement technology is operating).

$FC_N$ = Fraction control factor of $N_2O$ abatement technology ''N'' (decimal fraction of total emissions from unit ''z'' that are sent to abatement technology ''N'').

* * * * *

■ 13. Section 98.54 is amended by revising paragraphs (e) and (f) to read as follows:

**§ 98.54 Monitoring and QA/QC requirements.**

* * * * *

(e) You must determine the monthly amount of adipic acid produced. You must also determine the monthly amount of adipic acid produced during which $N_2O$ abatement technology is operating. These monthly amounts are determined according to the methods in paragraphs (c)(1) or (c)(2) of this section.

(f) You must determine the annual amount of adipic acid produced. You must also determine the annual amount of adipic acid produced during which $N_2O$ abatement technology is operating. These are determined by summing the respective monthly adipic acid production quantities determined in paragraph (e) of this section.

## Subpart G—[AMENDED]

■ 14. Section 98.73 is amended by:

■ a. Revising paragraph (b)(4) introductory text and revising Equation G–4.

■ b. Revising Equation G–5 and by removing parameter ''n'' of Equation G–5 and adding in its place parameter ''j''.

■ c. Revising the parameter ''$E_{CO2}k$'' of Equation G–5 in paragraph (b)(5).

The revisions read as follows:

**§ 98.73 Calculating GHG emissions.**

* * * * *

(b) * * *

(4) You must calculate the annual process $CO_2$ emissions from each ammonia processing unit k at your facility according to Equation G–4 of this section:

$$E_{CO2,k} = CO_{2,G,k} + CO_{2,L,k} + CO_{2,S,k} \quad \text{(Eq. G-4)}$$

* * * * *

(5) * * *

$$CO_2 = \sum_{k=1}^{j} E_{CO2,k} \quad \text{(Eq. G-5)}$$

* * * * *

$E_{CO2}k$ = Annual $CO_2$ emissions from each ammonia processing unit k (metric tons).

* * * * *

j = Total number of ammonia processing units.

* * * * *

■ 15. Section 98.75 is amended by revising paragraph (b) to read as follows:

**§ 98.75 Procedures for estimating missing data.**

* * * * *

(b) For missing feedstock supply rates used to determine monthly feedstock consumption, you must determine the best available estimate(s) of the parameter(s), based on all available process data.

■ 16. Section 98.76 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (b)(13) to read as follows:

**§ 98.76 Data reporting requirements.**

* * * * *

(a) If a CEMS is used to measure $CO_2$ emissions, then you must report the relevant information required under § 98.36 for the Tier 4 Calculation Methodology and the information in paragraphs (a)(1) and (2) of this section:

* * * * *

(b) If a CEMS is not used to measure emissions, then you must report all of the following information in this paragraph (b):

* * * * *

(13) Annual $CO_2$ emissions (metric tons) from the steam reforming of a hydrocarbon or the gasification of solid and liquid raw material at the ammonia manufacturing process unit used to produce urea and the method used to determine the $CO_2$ consumed in urea production.

## Subpart H—[AMENDED]

■ 17. Section 98.86 is amended by revising paragraph (a)(2) to read as follows:

**§ 98.86 Data reporting requirements.**

* * * * *

(a) * * *

(2) Annual facility cement production.

* * * * *

## Subpart I—[AMENDED]

■ 18. Section 98.96 is amended by revising paragraph (y)(3)(i) to read as follows:

**§ 98.96 Data reporting requirements.**

* * * * *

(y) * * *

(3) * * *

(i) The testing of tools to determine the potential effect on current utilization and by-product formation rates and destruction or removal efficiency values under the new conditions.

* * * * *

## Subpart K—[AMENDED]

■ 19. Section 98.113 is amended by revising Equation K–3 and by removing the parameter ''2000/2205'' of Equation K–3 and adding in its place the parameter ''2/2205'' to read as follows:

**§ 98.113 Calculating GHG emissions.**

* * * * *

(d) * * *

(1) * * *

$$E_{CH_4} = \sum_{1}^{i} (M_{product_i} \times \frac{2}{2205} \times EF_{product_i}) \quad \text{(Eq. K-3)}$$

* * * * *

2/2205 = Conversion factor to convert kg $CH_4$/ton of product to metric tons $CH_4$.

* * * * *

■ 20. Section 98.116 is amended by adding paragraph (e)(2) to read as follows:

**§ 98.116 Data reporting requirements.**

* * * * *

(e) * * *

(2) Annual process $CH_4$ emissions (in metric tons) from each EAF used for the production of any ferroalloy listed in Table K–1 of this subpart.

* * * * *

## Subpart L—[AMENDED]

■ 21. Section 98.126 is amended by revising paragraphs (j) introductory text, (j)(1), and (j)(3)(i) to read as follows:

**§ 98.126 Data reporting requirements.**

* * * * *

(j) *Special provisions for reporting years 2011, 2012, and 2013 only.* For reporting years 2011, 2012, and 2013, the owner or operator of a facility must comply with paragraphs (j)(1), (j)(2), and (j)(3) of this section.

(1) *Timing.* The owner or operator of a facility is not required to report the data elements at § 98.3(c)(4)(iii) and paragraphs (a)(2), (a)(3), (a)(4), (a)(6), (b), (c), (d), (e), (f), (g), and (h) of this section until the later of March 31, 2015 or the date set forth for that data element at § 98.3(c)(4)(vii) and Table A–7 of Subpart A of this part.

* * * * *

(3) * * *

(i) If you choose to use a default GWP rather than your best estimate of the GWP for fluorinated GHGs whose GWPs are not listed in Table A–1 of Subpart A of this part, use a default GWP of 10,000 for fluorinated GHGs that are fully fluorinated GHGs and use a default GWP of 2000 for other fluorinated GHGs.

* * * * *

## Subpart N—[AMENDED]

■ 22. Section 98.143 is amended by:

■ a. Revising the introductory text.

■ b. Revising paragraph (b) introductory text.

■ c. Revising the parameters ''$MF_i$'' and ''$F_i$'' of Equation N–1 in paragraph (b)(2)(iv).

The revisions read as follows:

**§ 98.143 Calculating GHG emissions.**

You must calculate and report the annual process $CO_2$ emissions from each continuous glass melting furnace using the procedure in paragraphs (a) through (c) of this section.

* * * * *

(b) For each continuous glass melting furnace that is not subject to the requirements in paragraph (a) of this section, calculate and report the process and combustion $CO_2$ emissions from the glass melting furnace by using either the procedure in paragraph (b)(1) of this section or the procedure in paragraph (b)(2) of this section, except as specified in paragraph (c) of this section.

* * * * *

(2) * * *

(iv) * * *

* * * * *

$MF_i$ = Annual average decimal mass fraction of carbonate-based mineral i in carbonate-based raw material i.

* * * * *

$F_i$ = Decimal fraction of calcination achieved for carbonate-based raw material i, assumed to be equal to 1.0.

* * * * *

■ 23. Section 98.144 is amended by revising paragraph (b) to read as follows:

**§ 98.144 Monitoring and QA/QC requirements.**

* * * * *

(b) You must measure carbonate-based mineral mass fractions at least annually to verify the mass fraction data provided by the supplier of the raw material; such measurements shall be based on sampling and chemical analysis using consensus standards that specify X-ray fluorescence. For measurements made in years prior to the emissions reporting year 2014, you may also use ASTM D3682–01 (Reapproved 2006) Standard Test Method for Major and Minor Elements in Combustion Residues from Coal Utilization Processes (incorporated by reference, *see* § 98.7) or ASTM D6349–09 Standard Test Method for Determination of Major and Minor Elements in Coal, Coke, and Solid Residues from Combustion of Coal and Coke by Inductively Coupled Plasma—Atomic Emission Spectrometry (incorporated by reference, *see* § 98.7).

* * * * *

■ 24. Section 98.146 is amended by revising paragraphs (b)(4), (6), and (7) to read as follows:

**§ 98.146 Data reporting requirements.**

* * * * *

(b) * * *

(4) Carbonate-based mineral decimal mass fraction for each carbonate-based raw material charged to a continuous glass melting furnace.

* * * * *

(6) The decimal fraction of calcination achieved for each carbonate-based raw material, if a value other than 1.0 is used to calculate process mass emissions of $CO_2$.

(7) Method used to determine decimal fraction of calcination.

* * * * *

■ 25. Section 98.147 is amended by revising paragraph (b)(5) to read as follows:

**§ 98.147 Records that must be retained.**

* * * * *

(b) * * *

(5) The decimal fraction of calcination achieved for each carbonate-based raw material, if a value other than 1.0 is used to calculate process mass emissions of $CO_2$.

* * * * *

## Subpart O—[AMENDED]

■ 26. Section 98.153 is amended by:

■ a. Revising paragraph (c) introductory text.

■ b. Revising paragraph (d) introductory text.

■ c. Revising the parameter ''$E_D$'' of Equation O–5 in paragraph (d).

The revisions read as follows:

### § 98.153 Calculating GHG emissions.

* * * * *

(c) For HCFC–22 production facilities that do not use a destruction device or that have a destruction device that is not directly connected to the HCFC–22 production equipment, HFC–23 emissions shall be estimated using Equation O–4 of this section:

* * * * *

(d) For HCFC–22 production facilities that use a destruction device connected to the HCFC–22 production equipment, HFC–23 emissions shall be estimated using Equation O–5 of this section:

* * * * *

$E_D$ = Mass of HFC–23 emitted annually from destruction device (metric tons), calculated using Equation O–8 of this section.

* * * * *

■ 27. Section 98.154 is amended by revising paragraph (j) to read as follows:

### § 98.154 Monitoring and QA/QC requirements.

* * * * *

(j) The number of sources of equipment type t with screening values less than 10,000 ppmv shall be the difference between the number of leak sources of equipment type t that could emit HFC–23 and the number of sources of equipment type t with screening values greater than or equal to 10,000 ppmv as determined under paragraph (i) of this section.

* * * * *

■ 28. Section 98.156 is amended by revising paragraph (c) to read as follows:

### § 98.156 Data reporting requirements.

* * * * *

(c) Each HFC–23 destruction facility shall report the concentration (mass fraction) of HFC–23 measured at the outlet of the destruction device during the facility's annual HFC–23 concentration measurements at the outlet of the device. If the concentration of HFC–23 is below the detection limit of the measuring device, report the detection limit and that the concentration is below the detection limit.

* * * * *

## Subpart P—[AMENDED]

■ 29. Section 98.163 is amended by:

■ a. Revising paragraph (b) introductory text.

■ b. Revising the parameters ''$Fdstk_n$'', ''$CC_n$'', and ''$MW_n$'' of Equation P–1 in paragraph (b)(1).

■ c. Revising the parameters ''$Fdstk_n$'' and ''$CC_n$'' of Equation P–2 in paragraph (b)(2).

■ d. Revising the parameters ''$Fdstk_n$'' and ''$CC_n$'' of Equation P–3 in paragraph (b)(3).

The revisions read as follows:

### § 98.163 Calculating GHG emissions.

* * * * *

(b) *Fuel and feedstock material balance approach.* Calculate and report $CO_2$ emissions as the sum of the annual emissions associated with each fuel and feedstock used for hydrogen production by following paragraphs (b)(1) through (3) of this section. The carbon content and molecular weight shall be obtained from the analyses conducted in accordance with § 98.164(b)(2), (b)(3), or (b)(4), as applicable, or from the missing data procedures in § 98.165. If the analyses are performed annually, then the annual value shall be used as the monthly average. If the analyses are performed more frequently than monthly, use the arithmetic average of values obtained during the month as the monthly average.

(1) * * *

* * * * *

$Fdstk_n$ = Volume or mass of the gaseous fuel or feedstock used in month n (scf (at standard conditions of 68 °F and atmospheric pressure) or kg of fuel or feedstock).

$CC_n$ = Average carbon content of the gaseous fuel or feedstock for month n (kg carbon per kg of fuel or feedstock).

$MW_n$ = Average molecular weight of the gaseous fuel or feedstock for month n (kg/kg-mole). If you measure mass, the term ''$MW_n$/MVC'' is replaced with ''1''.

* * * * *

(2) * * *

* * * * *

$Fdstk_n$ = Volume or mass of the liquid fuel or feedstock used in month n (gallons or kg of fuel or feedstock).

$CC_n$ = Average carbon content of the liquid fuel or feedstock, for month n (kg carbon per gallon or kg of fuel or feedstock).

* * * * *

(3) * * *

* * * * *

$Fdstk_n$ = Mass of solid fuel or feedstock used in month n (kg of fuel or feedstock).

$CC_n$ = Average carbon content of the solid fuel or feedstock, for month n (kg carbon per kg of fuel or feedstock).

* * * * *

■ 30. Section 98.164 is amended by:

■ a. Revising paragraphs (b)(3), (b)(4), and (b)(5) introductory text.

■ b. Removing paragraphs (c) and (d).

The revisions read as follows:

### § 98.164 Monitoring and QA/QC requirements.

* * * * *

(b) * * *

(3) Determine the carbon content of fuel oil, naphtha, and other liquid fuels and feedstocks at least monthly, except annually for standard liquid hydrocarbon fuels and feedstocks having consistent composition, or upon delivery for liquid fuels and feedstocks delivered by bulk transport (*e.g.,* by truck or rail).

(4) Determine the carbon content of coal, coke, and other solid fuels and feedstocks at least monthly, except annually for standard solid hydrocarbon fuels and feedstocks having consistent composition, or upon delivery for solid fuels and feedstocks delivered by bulk transport (*e.g.,* by truck or rail).

(5) You must use the following applicable methods to determine the carbon content for all fuels and feedstocks, and molecular weight of gaseous fuels and feedstocks. Alternatively, you may use the results of chromatographic analysis of the fuel and feedstock, provided that the chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions; and the methods used for operation, maintenance, and calibration of the chromatograph are documented in the written monitoring plan for the unit under § 98.3(g)(5).

* * * * *

■ 31. Section 98.166 is amended by revising paragraphs (a)(2), (a)(3), (b)(2), and (b)(5) to read as follows:

### § 98.166 Data reporting requirements.

* * * * *

(a) * * *

(2) Annual quantity of hydrogen produced (metric tons) for each process unit.

(3) Annual quantity of ammonia produced (metric tons), if applicable, for each process unit.

(b) * * *

(2) Monthly consumption of each fuel and feedstock used for hydrogen production and its type (scf or kg of gaseous fuels and feedstocks, gallons or

kg of liquid fuels and feedstocks, kg of solid fuels and feedstocks).

* * * * *

(5) Monthly analyses of carbon content for each fuel and feedstock used in hydrogen production (kg carbon/kg of gaseous and solid fuels and feedstocks, kg carbon per gallon or kg of liquid fuels and feedstocks).

* * * * *

■ 32. Section 98.167 is amended by adding paragraphs (c) and (d) to read as follows:

**§ 98.167 Records that must be retained.**

* * * * *

(c) For units using the calculation methodologies described in § 98.163(b), the records required under § 98.3(g) must include both the company records and a detailed explanation of how company records are used to estimate the following:

(1) Fuel and feedstock consumption, when solid fuel and feedstock is combusted and a CEMS is not used to measure GHG emissions.

(2) Fossil fuel consumption, when, pursuant to § 98.33(e), the owner or operator of a unit that uses CEMS to quantify $CO_2$ emissions and that combusts both fossil and biogenic fuels separately reports the biogenic portion of the total annual $CO_2$ emissions.

(3) Sorbent usage, if the methodology in § 98.33(d) is used to calculate $CO_2$ emissions from sorbent.

(d) The owner or operator must document the procedures used to ensure the accuracy of the estimates of fuel and feedstock usage and sorbent usage (as applicable) in § 98.163(b), including, but not limited to, calibration of weighing equipment, fuel and feedstock flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices must also be recorded, and the technical basis for these estimates must be provided.

## Subpart Q—[AMENDED]

■ 33. Section 98.170 is amended by revising the first sentence to read as follows:

**§ 98.170 Definition of the source category.**

The iron and steel production source category includes facilities with any of the following processes: taconite iron ore processing, integrated iron and steel manufacturing, cokemaking not collocated with an integrated iron and steel manufacturing process, direct reduction furnaces not collocated with an integrated iron and steel manufacturing process, and electric arc furnace (EAF) steelmaking not collocated with an integrated iron and steel manufacturing process. * * *

■ 34. Section 98.173 is amended by:

■ a. Revising the parameters ''($F_s$)'', ''($C_{sf}$)'', ''($F_g$)'', ''($F_l$)'', ''($C_0$)'', ''($C_p$)'', and ''($C_R$)'' of Equation Q–1 in paragraph (b)(1)(i).

■ b. Revising the parameters ''($C_{Iron}$)'', ''($C_{Scrap}$)'', ''($C_{Flux}$)'', ''($C_{Carbon}$)'', ''($C_{Steel}$)'', ''($C_{Slag}$)'', and ''($C_R$)'' of Equation Q–2 in paragraph (b)(1)(ii).

■ c. Revising the parameters ''($C_{Coal}$)'', ''($C_{Coke}$)'', and ''($C_R$)'' of Equation Q–3 in paragraph (b)(1)(iii).

■ d. Revising the parameters ''($F_g$)'', ''($C_{Feed}$)'', ''($C_{Sinter}$)'', and ''($C_R$)'' of Equation Q–4 in paragraph (b)(1)(iv).

■ e. Revising Equation Q–5 and the definitions in Equation Q–5 in paragraph (b)(1)(v).

■ f. Revising Equation Q–6 and revising the parameters ''($C_{Steelin}$)'', ''($C_{Steelout}$)'', and ''($C_R$)'' of Equation Q–6 in paragraph (b)(1)(vi).

■ g. Revising the parameters ''($F_g$)'', ''($C_{Ore}$)'', ''($C_{Carbon}$)'', ''($C_{Other}$)'', ''($C_{Iron}$)'', ''($C_{NM}$)'', and ''($C_R$)'' of Equation Q–7 in paragraph (b)(1)(vii).

■ h. Revising paragraphs (c) and (d).

The revisions read as follows:

**§ 98.173 Calculating GHG emissions.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

* * * * *

($F_s$) = Annual mass of the solid fuel used (metric tons).

($C_{sf}$) = Carbon content of the solid fuel, from the fuel analysis (expressed as a decimal fraction).

($F_g$) = Annual volume of the gaseous fuel used (scf).

* * * * *

($F_l$) = Annual volume of the liquid fuel used (gallons).

* * * * *

($C_0$) = Carbon content of the greenball (taconite) pellets, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_p$) = Carbon content of the fired pellets, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_R$) = Carbon content of the air pollution control residue, from the carbon analysis results (expressed as a decimal fraction).

(ii) * * *

* * * * *

($C_{Iron}$) = Carbon content of the molten iron, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Scrap}$) = Carbon content of the ferrous scrap, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Flux}$) = Carbon content of the flux materials, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Carbon}$) = Carbon content of the carbonaceous materials, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Steel}$) = Carbon content of the steel, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Slag}$) = Carbon content of the slag, from the carbon analysis (expressed as a decimal fraction).

* * * * *

($C_R$) = Carbon content of the air pollution control residue, from the carbon analysis results (expressed as a decimal fraction).

(iii) * * *

* * * * *

($C_{Coal}$) = Carbon content of the coal, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Coke}$) = Carbon content of the coke, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_R$) = Carbon content of the air pollution control residue, from the carbon analysis results (expressed as a decimal fraction).

(iv) * * *

* * * * *

($F_g$) = Annual volume of the gaseous fuel used (scf).

* * * * *

($C_{Feed}$) = Carbon content of the mixed sinter feed materials that form the bed entering the sintering machine, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Sinter}$) = Carbon content of the sinter pellets, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_R$) = Carbon content of the air pollution control residue, from the carbon analysis results (expressed as a decimal fraction).

(v) For EAFs, estimate $CO_2$ emissions using Equation Q–5 of this section.

$$CO_2 = \frac{44}{12} * \left[ \begin{array}{l} (Iron)*(C_{Iron}) + (Scrap)*(C_{Scrap}) + (Flux)*(C_{Flux}) + (Electrode)*(C_{Electrode}) + (Carbon) \\ *(C_{Carbon}) - (Steel)*(C_{Steel}) + (F_g)*(C_{gf})*\frac{MW}{MVC}*0.001 - (Slag)*(C_{Slag}) - (R)*(CR) \end{array} \right]$$

(Eq. Q-5)

Where:

$CO_2$ = Annual $CO_2$ mass emissions from the EAF (metric tons).

44/12 = Ratio of molecular weights, $CO_2$ to carbon.

(Iron) = Annual mass of direct reduced iron (if any) charged to the furnace (metric tons).

($C_{Iron}$) = Carbon content of the direct reduced iron, from the carbon analysis results (expressed as a decimal fraction).

(Scrap) = Annual mass of ferrous scrap charged to the furnace (metric tons).

($C_{Scrap}$) = Carbon content of the ferrous scrap, from the carbon analysis results (expressed as a decimal fraction).

(Flux) = Annual mass of flux materials (*e.g.,* limestone, dolomite) charged to the furnace (metric tons).

($C_{Flux}$) = Carbon content of the flux materials, from the carbon analysis results (expressed as a decimal fraction).

(Electrode) = Annual mass of carbon electrode consumed (metric tons).

($C_{Electrode}$) = Carbon content of the carbon electrode, from the carbon analysis results (expressed as a decimal fraction).

(Carbon) = Annual mass of carbonaceous materials (*e.g.,* coal, coke) charged to the furnace (metric tons).

($C_{Carbon}$) = Carbon content of the carbonaceous materials, from the carbon analysis results (expressed as a decimal fraction).

(Steel) = Annual mass of molten raw steel produced by the furnace (metric tons).

($C_{Steel}$) = Carbon content of the steel, from the carbon analysis results (expressed as a decimal fraction).

($F_g$) = Annual volume of the gaseous fuel used (scf at 60 degrees F and one atmosphere).

($C_{gf}$) = Average carbon content of the gaseous fuel, from the fuel analysis results (kg C per kg of fuel).

(MW) = Molecular weight of the gaseous fuel (kg/kg-mole).

(MVC) = Molar volume conversion factor (836.6 scf per kg-mole at standard conditions of 60 degrees F and one atmosphere).

(0.001) = Conversion factor from kg to metric tons.

(Slag) = Annual mass of slag produced by the furnace (metric tons).

($C_{Slag}$) = Carbon content of the slag, from the carbon analysis results (expressed as a decimal fraction).

(R) = Annual mass of air pollution control residue collected (metric tons).

($C_R$) = Carbon content of the air pollution control residue, from the carbon analysis results (expressed as a decimal fraction).

(vi) * * *

$$CO_2 = \frac{44}{12} * \{(Steel) * [(C_{Steelin}) - (C_{Steelout})] - (R) * (C_R)\}$$

(Eq. Q-6)

* * * * *

($C_{Steelin}$) = Carbon content of the molten steel before decarburization, from the carbon analysis results (expressed as a decimal fraction).

($C_{Steelout}$) = Carbon content of the molten steel after decarburization, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_R$) = Carbon content of the air pollution control residue, from the carbon analysis results (expressed as a decimal fraction).

(vii) * * *

* * * * *

($F_g$) = Annual volume of the gaseous fuel used (scf).

* * * * *

($C_{Ore}$) = Carbon content of the iron ore or iron ore pellets, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Carbon}$) = Carbon content of the carbonaceous materials, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Other}$) = Average carbon content of the other materials charged to the furnace, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{Iron}$) = Carbon content of the iron, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_{NM}$) = Carbon content of the non-metallic materials, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

($C_R$) = Carbon content of the air pollution control residue, from the carbon analysis results (expressed as a decimal fraction).

* * * * *

(c) You must determine emissions of $CO_2$ from the coke pushing process in $mtCO_2e$ by multiplying the metric tons of coal charged to the by-product recovery and non-recovery coke ovens during the reporting period by 0.008.

(d) If GHG emissions from a taconite indurating furnace, basic oxygen furnace, non-recovery coke oven battery, sinter process, EAF, decarburization vessel, or direct reduction furnace are vented through a stack equipped with a CEMS that complies with the Tier 4 methodology in subpart C of this part, or through the same stack as any combustion unit or process equipment that reports $CO_2$ emissions using a CEMS that complies with the Tier 4 Calculation Methodology in subpart C of this part (General Stationary Fuel Combustion Sources), then the calculation methodology in paragraph (b) of this section shall not be used to calculate process emissions. The owner or operator shall report under this subpart the combined stack emissions according to the Tier 4 Calculation Methodology in § 98.33(a)(4) and comply with all associated requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources).

■ 35. Section 98.174 is amended by adding a sentence to the end of paragraph (b)(1) and revising paragraph (c)(2) to read as follows:

**§ 98.174 Monitoring and QA/QC requirements.**

* * * * *

(b) * * *

(1) * * * No determination of the mass of steel output from decarburization vessels is required.

* * * * *

(c) * * *

(2)(i) For the exhaust from basic oxygen furnaces, EAFs, decarburization vessels, and direct reduction furnaces, sample the furnace exhaust for at least three complete production cycles that start when the furnace is being charged and end after steel or iron and slag have

been tapped. For EAFs that produce both carbon steel and stainless or specialty (low carbon) steel, develop an emission factor for the production of both types of steel.

(ii) For the exhaust from continuously charged EAFs, sample the exhaust for a period spanning at least three hours. For EAFs that produce both carbon steel and stainless or specialty (low carbon) steel, develop an emission factor for the production of both types of steel.

* * * * *

■ 36. Section 98.175 is amended by revising paragraph (a) to read as follows:

**§ 98.175 Procedures for estimating missing data.**

* * * * *

(a) Except as provided in § 98.174(b)(4), 100 percent data availability is required for the carbon content of inputs and outputs for facilities that estimate emissions using the carbon mass balance procedure in § 98.173(b)(1) or facilities that estimate emissions using the site-specific emission factor procedure in § 98.173(b)(2).

* * * * *

■ 37. Section 98.176 is amended by revising paragraph (e) introductory text to read as follows:

**§ 98.176 Data reporting requirements.**

* * * * *

(e) If you use the carbon mass balance method in § 98.173(b)(1) to determine $CO_2$ emissions, you must, except as provided in § 98.174(b)(4), report the following information for each process:

* * * * *

■ 38. Section 98.177 is amended by revising paragraph (b) to read as follows:

**§ 98.177 Records that must be retained.**

* * * * *

(b) When the carbon mass balance method is used to estimate emissions for a process, the monthly mass of each process input and output that are used to determine the annual mass, except that no determination of the mass of steel output from decarburization vessels is required.

* * * * *

## Subpart S—[AMENDED]

■ 39. Section 98.190 is amended by revising paragraph (a) to read as follows:

**§ 98.190 Definition of the source category.**

(a) Lime manufacturing plants (LMPs) engage in the manufacture of a lime product by calcination of limestone, dolomite, shells or other calcareous substances as defined in 40 CFR 63.7081(a)(1).

* * * * *

■ 40. Section 98.193 is amended by:

■ a. Revising paragraph (a).

■ b. Revising paragraph (b)(1).

■ c. Revising paragraph (b)(2) introductory text.

■ d. Revising paragraph (b)(2)(ii) introductory text.

■ e. Revising the parameters ''$EF_{LKD,i,n}$'', ''$CaO_{LKD,i,n}$'' and ''$MgO_{LKD,i,n}$'' of Equation S–2 in paragraph (b)(2)(ii).

■ f. Revising paragraph (b)(2)(iii) introductory text.

■ g. Revising the parameters ''$E_{waste,i}$'', ''$CaO_{waste,i}$'', ''$MgO_{waste,i}$'', and ''$M_{waste,i}$'' of Equation S–3 in paragraph (b)(2)(iii).

■ h. Revising paragraph (b)(2)(iv) introductory text.

■ i. Revising the parameters ''$E_{CO2}$'', ''$EF_{LKD,i,n}$'', ''$M_{LKD,i,n}$'', ''$E_{waste,i}$'', ''b'' and ''z'' of Equation S–4 in paragraph (b)(2)(iv).

The revisions read as follows:

**§ 98.193 Calculating GHG emissions.**

* * * * *

(a) If all lime kilns meet the conditions specified in § 98.33(b)(4)(ii) or (iii), you must calculate and report under this subpart the combined process and combustion $CO_2$ emissions from all lime kilns by operating and maintaining a CEMS to measure $CO_2$ emissions according to the Tier 4 Calculation Methodology specified in § 98.33(a)(4) and all associated requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources).

(b) * * *

(1) Calculate and report under this subpart the combined process and combustion $CO_2$ emissions from all lime kilns by operating and maintaining a CEMS to measure $CO_2$ emissions from all lime kilns according to the Tier 4 Calculation Methodology specified in § 98.33(a)(4) and all associated requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources).

(2) Calculate and report process and combustion $CO_2$ emissions from all lime kilns separately using the procedures specified in paragraphs (b)(2)(i) through (v) of this section.

* * * * *

(ii) You must calculate a monthly emission factor for each type of calcined byproduct or waste sold (including lime kiln dust) using Equation S–2 of this section:

* * * * *

$EF_{LKD,i,n}$ = Emission factor for calcined lime byproduct or waste type i sold, for month n (metric tons $CO_2$/ton lime byproduct).

$CaO_{LKD,i,n}$ = Calcium oxide content for calcined lime byproduct or waste type i sold, for month n (metric tons CaO/metric ton lime).

$MgO_{LKD,i,n}$ = Magnesium oxide content for calcined lime byproduct or waste type i sold, for month n (metric tons MgO/metric ton lime).

* * * * *

(iii) You must calculate the annual $CO_2$ emissions from each type of calcined byproduct or waste that is not sold (including lime kiln dust and scrubber sludge) using Equation S–3 of this section:

* * * * *

$E_{waste,i}$ = Annual $CO_2$ emissions for calcined lime byproduct or waste type i that is not sold (metric tons $CO_2$).

* * * * *

$CaO_{waste,i}$ = Calcium oxide content for calcined lime byproduct or waste type i that is not sold (metric tons CaO/metric ton lime).

$MgO_{waste,i}$ = Magnesium oxide content for calcined lime byproduct or waste type i that is not sold (metric tons MgO/metric ton lime).

$M_{waste,i}$ = Annual weight or mass of calcined byproducts or wastes for lime type i that is not sold (tons).

* * * * *

(iv) You must calculate annual $CO_2$ process emissions for all lime kilns using Equation S–4 of this section:

* * * * *

$E_{CO2}$ = Annual $CO_2$ process emissions from lime production from all lime kilns (metric tons/year).

* * * * *

$EF_{LKD,i,n}$ = Emission factor of calcined byproducts or wastes sold for lime type i in calendar month n, (metric tons $CO_2$/ton byproduct or waste) from Equation S–2 of this section.

$M_{LKD,i,n}$ = Monthly weight or mass of calcined byproducts or waste sold (such as lime kiln dust, LKD) for lime type i in calendar month n (tons).

$E_{waste,i}$ = Annual $CO_2$ emissions for calcined lime byproduct or waste type i that is not sold (metric tons $CO_2$) from Equation S–3 of this section.

* * * * *

b = Number of calcined byproducts or wastes that are sold.

z = Number of calcined byproducts or wastes that are not sold.

* * * * *

■ 41. Section 98.194 is amended by revising paragraphs (a), (b), and (c) introductory text to read as follows:

**§ 98.194 Monitoring and QA/QC requirements.**

(a) You must determine the total quantity of each type of lime product that is produced and each calcined byproduct or waste (such as lime kiln dust) that is sold. The quantities of each should be directly measured monthly

with the same plant instruments used for accounting purposes, including but not limited to, calibrated weigh feeders, rail or truck scales, and barge measurements. The direct measurements of each lime product shall be reconciled annually with the difference in the beginning of and end of year inventories for these products, when measurements represent lime sold.

(b) You must determine the annual quantity of each calcined byproduct or waste generated that is not sold by either direct measurement using the same instruments identified in paragraph (a) of this section or by using a calcined byproduct or waste generation rate.

(c) You must determine the chemical composition (percent total CaO and percent total MgO) of each type of lime product that is produced and each type of calcined byproduct or waste sold according to paragraph (c)(1) or (2) of this section. You must determine the chemical composition of each type of lime product that is produced and each type of calcined byproduct or waste sold on a monthly basis. You must determine the chemical composition for each type of calcined byproduct or waste that is not sold on an annual basis.

* * * * *

■ 42. Section 98.195 is amended by revising paragraph (a) to read as follows:

**§ 98.195 Procedures for estimating missing data.**

* * * * *

(a) For each missing value of the quantity of lime produced (by lime type), and quantity of calcined byproduct or waste produced and sold, the substitute data value shall be the best available estimate based on all available process data or data used for accounting purposes.

* * * * *

■ 43. Section 98.196 is amended by revising paragraphs (a)(1), (a)(2), (a)(4), (a)(5), (a)(7), (b)(1) through (6), (b)(9) through (11), and (b)(14) to read as follows:

**§ 98.196 Data reporting requirements.**

* * * * *

(a) * * *

(1) Method used to determine the quantity of lime that is produced and quantity of lime that is sold.

(2) Method used to determine the quantity of calcined lime byproduct or waste sold.

* * * * *

(4) Beginning and end of year inventories for calcined lime byproducts or wastes sold, by type.

(5) Annual amount of calcined lime byproduct or waste sold, by type (tons).

* * * * *

(7) Annual amount of calcined lime byproduct or waste that is not sold, by type (tons).

* * * * *

(b) * * *

(1) Annual $CO_2$ process emissions from all lime kilns combined (metric tons).

(2) Monthly emission factors (metric ton $CO_2$/ton lime product) for each lime product type produced.

(3) Monthly emission factors for each calcined byproduct or waste by lime type that is sold.

(4) Standard method used (ASTM or NLA testing method) to determine chemical compositions of each lime type produced and each calcined lime byproduct or waste type.

(5) Monthly results of chemical composition analysis of each type of lime product produced and calcined byproduct or waste sold.

(6) Annual results of chemical composition analysis of each type of lime byproduct or waste that is not sold.

* * * * *

(9) Method used to determine the quantity of calcined lime byproduct or waste sold.

(10) Monthly amount of calcined lime byproduct or waste sold, by type (tons).

(11) Annual amount of calcined lime byproduct or waste that is not sold, by type (tons).

* * * * *

(14) Beginning and end of year inventories for calcined lime byproducts or wastes sold.

* * * * *

## Subpart V—[AMENDED]

■ 44. Section 98.222 is amended by revising paragraph (a) to read as follows:

**§ 98.222 GHGs to report.**

(a) You must report $N_2O$ process emissions from each nitric acid train as required by this subpart.

* * * * *

■ 45. Section 98.223 is amended by:

■ a. Revising paragraphs (b) introductory text, (b)(1), (b)(3), (d) introductory text, and (e) introductory text.

■ b. Removing the parameter ''$P_{a,N}$'' of Equation V–2 in paragraph (e) and adding in its place the parameter ''$P_{t,N}$''.

■ c. Revising parameters ''$E_{N2Ot}$'', ''$P_t$'', ''DF'', and ''AF'' of Equation V–3a in paragraph (g)(1).

■ d. Revising paragraph (g)(2) introductory text.

■ e. Revising parameters ''$E_{N2Ot}$'', ''$EF_{N2O,t}$'', ''$P_t$'', ''$DF_1$'', ''$AF_1$'', ''$DF_2$'', ''$AF_2$'', ''$DF_N$'', and ''$AF_N$'' of Equation V–3b in paragraph (g)(2).

■ f. Revising paragraph (g)(3) introductory text.

■ g. Revising parameters ''$E_{N2Ot}$'', ''$EF_{N2O,t}$'', ''$P_t$'', ''$DF_N$'', ''$AF_N$'', and ''$FC_N$'' of Equation V–3c in paragraph (g)(3).

■ h. Revising parameter ''$E_{N2Ot}$'' of Equation V–3d in paragraph (g)(4).

■ i. Revising paragraph (i).

The revisions read as follows:

**§ 98.223 Calculating GHG emissions.**

* * * * *

(b) You must conduct an annual performance test for each nitric acid train according to paragraphs (b)(1) through (3) of this section.

(1) You must conduct the performance test at the absorber tail gas vent, referred to as the test point, for each nitric acid train according to § 98.224(b) through (f). If multiple nitric acid trains exhaust to a common abatement technology and/or emission point, you must sample each process in the ducts before the emissions are combined, sample each process when only one process is operating, or sample the combined emissions when multiple processes are operating and base the site-specific emission factor on the combined production rate of the multiple nitric acid trains.

* * * * *

(3) You must measure the production rate during the performance test and calculate the production rate for the test period in tons (100 percent acid basis) per hour.

* * * * *

(d) If nitric acid train ''t'' exhausts to any $N_2O$ abatement technology ''N'', you must determine the destruction efficiency for each $N_2O$ abatement technology ''N'' according to paragraphs (d)(1), (2), or (3) of this section.

* * * * *

(e) If nitric acid train ''t'' exhausts to any $N_2O$ abatement technology ''N'', you must determine the annual amount of nitric acid produced on nitric acid train ''t'' while $N_2O$ abatement technology ''N'' is operating according to § 98.224(f). Then you must calculate the abatement utilization factor for each $N_2O$ abatement technology ''N'' for each nitric acid train ''t'' according to Equation V–2 of this section.

* * * * *

$P_{t,N}$ = Annual nitric acid production from nitric acid train ''t'' during which $N_2O$ abatement technology ''N'' was operational (ton acid produced, 100 percent acid basis).

* * * * *

(g) * * *

(1) * * *

* * * * *

$E_{N2Ot}$ = Annual $N_2O$ mass emissions from nitric acid train ''t'' according to this Equation V–3a (metric tons).

* * * * *

$P_t$ = Annual nitric acid production from nitric acid train ''t'' (ton acid produced, 100 percent acid basis).

DF = Destruction efficiency of $N_2O$ abatement technology N that is used on nitric acid train ''t'' (decimal fraction of $N_2O$ removed from vent stream).

AF = Abatement utilization factor of $N_2O$ abatement technology ''N'' for nitric acid train ''t'' (decimal fraction of annual production during which abatement technology is operating).

* * * * *

(2) If multiple $N_2O$ abatement technologies are located in series after your test point, you must use the emissions factor (determined in Equation V–1 of this section), the destruction efficiency (determined in paragraph (d) of this section), the annual nitric acid production (determined in paragraph (i) of this section), and the abatement utilization factor (determined in paragraph (e) of this section), according to Equation V–3b of this section:

* * * * *

$E_{N2Ot}$ = Annual $N_2O$ mass emissions from nitric acid train ''t'' according to this Equation V–3b (metric tons).

$EF_{N2O,t}$ = $N_2O$ emissions factor for nitric acid train ''t'' (lb $N_2O$/ton nitric acid produced).

$P_t$ = Annual nitric acid produced from nitric acid train ''t'' (ton acid produced, 100 percent acid basis).

$DF_1$ = Destruction efficiency of $N_2O$ abatement technology 1 (decimal fraction of $N_2O$ removed from vent stream).

$AF_1$ = Abatement utilization factor of $N_2O$ abatement technology 1 (decimal fraction of time that abatement technology 1 is operating).

$DF_2$ = Destruction efficiency of $N_2O$ abatement technology 2 (decimal fraction of $N_2O$ removed from vent stream).

$AF_2$ = Abatement utilization factor of $N_2O$ abatement technology 2 (decimal fraction of time that abatement technology 2 is operating).

$DF_N$ = Destruction efficiency of $N_2O$ abatement technology N (decimal fraction of $N_2O$ removed from vent stream).

$AF_N$ = Abatement utilization factor of $N_2O$ abatement technology N (decimal fraction of time that abatement technology N is operating).

* * * * *

(3) If multiple $N_2O$ abatement technologies are located in parallel after your test point, you must use the emissions factor (determined in Equation V–1 of this section), the destruction efficiency (determined in paragraph (d) of this section), the annual nitric acid production (determined in paragraph (i) of this section), and the abatement utilization factor (determined in paragraph (e) of this section), according to Equation V–3c of this section:

* * * * *

$E_{N2Ot}$ = Annual $N_2O$ mass emissions from nitric acid train ''t'' according to this Equation V–3c (metric tons).

$EF_{N2O,t}$ = $N_2O$ emissions factor for nitric acid train ''t'' (lb $N_2O$/ton nitric acid produced).

$P_t$ = Annual nitric acid produced from nitric acid train ''t'' (ton acid produced, 100 percent acid basis).

$DF_N$ = Destruction efficiency of $N_2O$ abatement technology ''N'' (decimal fraction of $N_2O$ removed from vent stream).

$AF_N$ = Abatement utilization factor of $N_2O$ abatement technology ''N'' (decimal fraction of time that abatement technology ''N'' is operating).

$FC_N$ = Fraction control factor of $N_2O$ abatement technology ''N'' (decimal fraction of total emissions from nitric acid train ''t'' that are sent to abatement technology ''N'').

* * * * *

(4) * * *

* * * * *

$E_{N2Ot}$ = Annual $N_2O$ mass emissions from nitric acid train ''t'' according to this Equation V–3d (metric tons).

* * * * *

(i) You must determine the total annual amount of nitric acid produced on each nitric acid train ''t'' (tons acid produced, 100 percent acid basis), according to § 98.224(f).

■ 46. Section 98.224 is amended by revising paragraphs (c) introductory text, (e), and (f) to read as follows:

**§ 98.224 Monitoring and QA/QC requirements.**

* * * * *

(c) You must determine the production rate(s) (100 percent acid basis) from each nitric acid train during the performance test according to paragraphs (c)(1) or (2) of this section.

* * * * *

(e) You must determine the total monthly amount of nitric acid produced. You must also determine the monthly amount of nitric acid produced while $N_2O$ abatement technology is operating from each nitric acid train. These monthly amounts are determined according to the methods in paragraphs (c)(1) or (2) of this section.

(f) You must determine the annual amount of nitric acid produced. You must also determine the annual amount of nitric acid produced while $N_2O$ abatement technology is operating for each nitric acid train. These annual amounts are determined by summing the respective monthly nitric acid quantities determined in paragraph (e) of this section.

■ 47. Section 98.226 is amended by:
■ a. Revising paragraph (a).
■ b. Adding reserved paragraph (o).
■ c. Revising paragraph (p).

The revisions and addition read as follows:

**§ 98.226 Data reporting requirements.**

* * * * *

(a) Nitric Acid train identification number.

* * * * *

(p) Fraction control factor for each abatement technology (percent of total emissions from the nitric acid train that are sent to the abatement technology) if Equation V–3c is used.

## Subpart W—[Amended]

■ 48. Section 98.233 is amended by:
■ a. Revising parameter ''$Conv_i$'' of Equation W–1 in paragraph (a).
■ b. Revising parameter ''$Conv_i$'' of Equation W–2 in paragraph (c).
■ c. Revising parameter ''GWP'' of Equation W–36 in paragraph (v).

The revisions read as follows:

**§ 98.233 Calculating GHG emissions.**

* * * * *

(a) * * *

$Conv_i$ = Conversion from standard cubic feet to metric tons $CO_2e$; 0.000479 for $CH_4$, and 0.00005262 for $CO_2$.

* * * * *

(c) * * *

$Conv_i$ = Conversion from standard cubic feet to metric tons $CO_2e$; 0.000479 for $CH_4$, and 0.00005262 for $CO_2$.

* * * * *

(v) * * *

GWP = Global warming potential, 1 for $CO_2$, 25 for $CH_4$, and 298 for $N_2O$.

* * * * *

## Subpart X—[AMENDED]

■ 49. Section 98.242 is amended by revising paragraph (b)(2) to read as follows:

**§ 98.242 GHGs to report.**

* * * * *

(b) * * *

(2) If you comply with § 98.243(c), report $CO_2$, $CH_4$, and $N_2O$ combustion emissions under subpart C of this part (General Stationary Fuel Combustion Sources) by following the requirements of subpart C for all fuels, except

emissions from burning petrochemical process off-gas in any combustion unit, including units that are not part of the petrochemical process unit, are not to be reported under subpart C of this part. Determine the applicable Tier in subpart C of this part (General Stationary Fuel Combustion Sources) based on the maximum rated heat input capacity of the stationary combustion source.

* * * * *

■ 50. Section 98.243 is amended by:
■ a. Revising paragraph (b).
■ b. Revising paragraphs (c)(3) and (4).
■ c. Revising the equation terms ''$C_g$'', ''$(F_{gf})_{i,n}$'', and ''$(P_{gp})_{i,n}$'' of Equation X–1 in paragraph (c)(5)(i).
■ d. Removing the equation term ''$(MW_f)_I$'' of Equation X–1 and adding in its place the parameter ''$(MW_f)_{i,n}$'' and defining the new parameter in the equation terms.
■ e. Removing the equation term ''$(MW_p)_I$'' of Equation X–1 and adding in its place the parameter ''$(MW_p)_{i,n}$'' and defining the new parameter in the equation terms.
■ f. Revising paragraph (d)(3)(i).

The revisions read as follows:

**§ 98.243 Calculating GHG emissions.**

* * * * *

(b) *Continuous emission monitoring system (CEMS).* Route all process vent emissions and emissions from stationary combustion units that burn any amount of process off-gas to one or more stacks and determine GHG emissions as specified in paragraphs (b)(1) through (3) of this section.

(1) Determine $CO_2$ emissions from each stack (except flare stacks) according to the Tier 4 Calculation Methodology requirements in subpart C of this part.

(2) For each stack (except flare stacks) that includes emissions from combustion of petrochemical process off-gas, calculate $CH_4$ and $N_2O$ emissions in accordance with subpart C of this part (use Equation C–10 and the ''fuel gas'' emission factors in Table C–2 of subpart C of this part).

(3) For each flare, calculate $CO_2$, $CH_4$, and $N_2O$ emissions using the methodology specified in § 98.253(b)(1) through (3).

(c) * * *

(3) Collect a sample of each feedstock and product at least once per month and determine the carbon content of each sample according to the procedures of § 98.244(b)(4). If multiple valid carbon content measurements are made during the monthly measurement period, average them arithmetically. However, if a particular liquid or solid feedstock is delivered in lots, and if multiple deliveries of the same feedstock are received from the same supply source in a given calendar month, only one representative sample is required. Alternatively, you may use the results of analyses conducted by a feedstock supplier, or product customer, provided the sampling and analysis is conducted at least once per month using any of the procedures specified in § 98.244(b)(4).

(4) If you determine that the monthly average concentration of a specific compound in a feedstock or product is greater than 99.5 percent by volume or mass, then as an alternative to the sampling and analysis specified in paragraph (c)(3) of this section, you may determine carbon content in accordance with paragraphs (c)(4)(i) through (iii) of this section.

(i) Calculate the carbon content assuming 100 percent of that feedstock or product is the specific compound.

(ii) Maintain records of any determination made in accordance with this paragraph (c)(4) along with all supporting data, calculations, and other information.

(iii) Reevaluate determinations made under this paragraph (c)(4) after any process change that affects the feedstock or product composition. Keep records of the process change and the corresponding composition determinations. If the feedstock or product composition changes so that the average monthly concentration falls below 99.5 percent, you are no longer permitted to use this alternative method.

(5) * * *

(i) * * *

$$C_g = \sum_{n=1}^{12}\left[\sum_{i=1}^{j\,or\,k}\left[\left(F_{gf}\right)_{i,n} * \left(CC_{gf}\right)_{i,n} * \frac{\left(MW_f\right)_{i,n}}{MVC} - \left(P_{gp}\right)_{i,n} * \left(CC_{gp}\right)_{i,n} * \frac{\left(MW_p\right)_{i,n}}{MVC}\right]\right] \quad \text{(Eq. X-1)}$$

* * * * *

$C_g$ = Annual net contribution to calculated emissions from carbon (C) in gaseous materials, including streams containing $CO_2$ recovered for sale or use in another process (kg/yr).

$(F_{gf})_{i,n}$ = Volume or mass of gaseous feedstock i introduced in month ''n'' (scf or kg). If you measure mass, the term $(MW_f)_{i,n}$/MVC is replaced with ''1''.

* * * * *

$(MW_f)_{i,n}$ = Molecular weight of gaseous feedstock i in month ''n''(kg/kg-mole).

* * * * *

$(P_{gp})_{i,n}$ = Volume or mass of gaseous product i produced in month ''n'' (scf or kg). If you measure mass, the term $(MW_p)_{i,n}$/MVC is replaced with ''1''.

* * * * *

$(MW_p)_{i,n}$ = Molecular weight of gaseous product i in month ''n'' (kg/kg-mole).

* * * * *

(d) * * *

(3) * * *

(i) For all gaseous fuels that contain ethylene process off-gas, use the emission factors for ''Fuel Gas'' in Table C–2 of subpart C of this part (General Stationary Fuel Combustion Sources).

* * * * *

■ 51. Section 98.244 is amended by:
■ a. Revising paragraph (b)(4) introductory text, and paragraphs (b)(4)(xiii), (b)(4)(xiv), and (b)(4)(xv)(A).
■ b. Adding paragraph (c).

The revisions and addition read as follows:

**§ 98.244 Monitoring and QA/QC requirements.**

* * * * *

(b) * * *

(4) Beginning January 1, 2010, use any applicable methods specified in paragraphs (b)(4)(i) through (xv) of this section to determine the carbon content or composition of feedstocks and products and the average molecular weight of gaseous feedstocks and products. Calibrate instruments in accordance with paragraphs (b)(4)(i) through (xv) of this section, as applicable. For coal used as a feedstock, the samples for carbon content determinations shall be taken at a location that is representative of the coal feedstock used during the corresponding monthly period. For carbon black products, samples shall be taken of each grade or type of product produced during the monthly period. Samples of coal feedstock or carbon black product for carbon content determinations may be either grab samples collected and analyzed monthly or a composite of samples collected more frequently and analyzed monthly. Analyses conducted in accordance with methods specified in paragraphs (b)(4)(i) through (xv) of this

section may be performed by the owner or operator, by an independent laboratory, by the supplier of a feedstock, or by a product customer.

* * * * *

(xiii) The results of chromatographic analysis of a feedstock or product, provided that the chromatograph is operated, maintained, and calibrated according to the manufacturer's instructions.

(xiv) The results of mass spectrometer analysis of a feedstock or product, provided that the mass spectrometer is operated, maintained, and calibrated according to the manufacturer's instructions.

(xv) * * *

(A) An industry standard practice or a method published by a consensus-based standards organization if such a method exists for carbon black feedstock oils and carbon black products. Consensus-based standards organizations include, but are not limited to, the following: ASTM International (100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–B2959, (800) 262–1373, *http://www.astm.org*), the American National Standards Institute (ANSI, 1819 L Street, NW., 6th floor, Washington, DC 20036, (202) 293–8020, *http://www.ansi.org*), the American Gas Association (AGA, 400 North Capitol Street NW., 4th Floor, Washington, DC 20001, (202) 824–7000, *http://www.aga.org*), the American Society of Mechanical Engineers (ASME, Three Park Avenue, New York, NY 10016–5990, (800) 843–2763, *http://www.asme.org*), the American Petroleum Institute (API, 1220 L Street NW., Washington, DC 20005–4070, (202) 682–8000, *http://www.api.org*), and the North American Energy Standards Board (NAESB, 801 Travis Street, Suite 1675, Houston, TX 77002, (713) 356–0060, *http://www.naesb.org*). The method(s) used shall be documented in the monitoring plan required under § 98.3(g)(5).

* * * * *

(c) If you comply with § 98.243(b) or (d), conduct monitoring and QA/QC for flares in accordance with § 98.254(b) through (e) for each flare gas flow meter, gas composition meter, and/or heating value monitor that you use to comply with § 98.253(b)(1) through (b)(3). You must implement all applicable QA/QC requirements specified in this paragraph (c) beginning no later than January 1, 2015.

■ 52. Section 98.245 is revised to read as follows:

**§ 98.245 Procedures for estimating missing data.**

For missing feedstock and product flow rates, use the same procedures as for missing fuel usage as specified in § 98.35(b)(2). For missing feedstock and product carbon contents and missing molecular weights for gaseous feedstocks and products, use the same procedures as for missing carbon contents and missing molecular weights for fuels as specified in § 98.35(b)(1).

For missing flare data, follow the procedures in § 98.255(b) and (c).

■ 53. Section 98.246 is amended by:

■ a. Revising paragraphs (a)(6), (a)(8), (a)(9), (a)(11) introductory text, (a)(11)(iii), and (b)(2) through (5).

■ b. Removing and reserving paragraph (b)(6).

■ c. Revising paragraph (c)(4).

The revisions read as follows:

**§ 98.246 Data reporting requirements.**

* * * * *

(a) * * *

(6) For each feedstock and product, provide the information specified in paragraphs (a)(6)(i) through (a)(6)(iii) of this section.

(i) Name of each method used to determine carbon content or molecular weight in accordance with § 98.244(b)(4);

(ii) Description of each type of device (e.g., flow meter, weighing device) used to determine flow or mass in accordance with § 98.244(b)(1) through (3).

(iii) Identification of each method (i.e., method number, title, or other description) used to determine flow or mass in accordance with § 98.244(b)(1) through (3).

* * * * *

(8) Identification of each combustion unit that burned both process off-gas and supplemental fuel, including combustion units that are not part of the petrochemical process unit.

(9) The number of days during which off-specification product was produced if the alternative to sampling and analysis specified in § 98.243(c)(4) is used for a product, and, if applicable, the date of any process change that reduced the monthly average composition to less than 99.5 percent for each product or feedstock for which you comply with the alternative to sampling and analysis specified in § 98.243(c)(4).

* * * * *

(11) If you determine carbon content or composition of a feedstock or product using a method under § 98.244(b)(4)(xv)(B), report the information listed in paragraphs (a)(11)(i) through (a)(11)(iii) of this section. Include the information in paragraph (a)(11)(i) of this section in each annual report. Include the information in paragraphs (a)(11)(ii) and (a)(11)(iii) of this section only in the first applicable annual report, and provide any changes to this information in subsequent annual reports.

* * * * *

(iii) An explanation of why an alternative to the methods listed in §§ 98.244(b)(4)(i) through (xiv) is needed.

(b) * * *

(2) For CEMS used on stacks that include emissions from stationary combustion units that burn any amount of off-gas from the petrochemical process, report the relevant information required under § 98.36(c)(2) and (e)(2)(vi) for the Tier 4 calculation methodology. Sections 98.36(c)(2)(ii) and (c)(2)(ix) do not apply for the purposes of this subpart.

(3) For CEMS used on stacks that do not include emissions from stationary combustion units, report the information required under § 98.36(b)(6), (b)(7), and (e)(2)(vi).

(4) For each CEMS monitoring location that meets the conditions in paragraph (b)(2) or (3) of this section, provide an estimate based on engineering judgment of the fraction of the total $CO_2$ emissions that results from $CO_2$ directly emitted by the petrochemical process unit plus $CO_2$ generated by the combustion of off-gas from the petrochemical process unit.

(5) For each CEMS monitoring location that meets the conditions in paragraph (b)(2) of this section, report the $CH_4$ and $N_2O$ emissions expressed in metric tons of each gas. For each CEMS monitoring location, provide an estimate based on engineering judgment of the fraction of the total $CH_4$ and $N_2O$ emissions that is attributable to combustion of off-gas from the petrochemical process unit.

* * * * *

(c) * * *

(4) Name and annual quantity of each feedstock (metric tons).

* * * * *

■ 54. Section 98.247 is amended by revising paragraphs (b) introductory text, (b)(2), and (b)(3) to read as follows:

**§ 98.247 Records that must be retained.**

* * * * *

(b) If you comply with the mass balance methodology in § 98.243(c), then you must retain records of the information listed in paragraphs (b)(1) through (4) of this section.

* * * * *

(2) Start and end times for time periods when off-specification product is produced, if you comply with the alternative methodology in § 98.243(c)(4) for determining carbon content of product.

(3) As part of the monitoring plan required under § 98.3(g)(5), record the estimated accuracy of measurement devices and the technical basis for these estimates.

* * * * *

■ 55. Section 98.248 is amended by revising the definition of ''Product'' to read as follows:

**§ 98.248 Definitions.**

* * * * *

*Product,* as used in § 98.243, means each of the following carbon-containing outputs from a process: the petrochemical, recovered byproducts, and liquid organic wastes that are not combusted onsite. Product does not include process vent emissions, fugitive emissions, or wastewater.

## Subpart Y—[AMENDED]

■ 56. Section 98.252 is amended by revising the parenthetical phrase preceding the last two sentences in paragraph (a) introductory text and revising paragraph (i) to read as follows:

**§ 98.252 GHGs to report.**

* * * * *

(a) * * * (Use the default $CH_4$ and $N_2O$ emission factors for ''Fuel Gas'' in Table C–2 of this part. For Tier 3, use either the default high heat value for fuel gas in Table C–1 of subpart C of this part or a calculated HHV, as allowed in Equation C–8 of subpart C of this part.) * * *

* * * * *

(i) $CO_2$ emissions from non-merchant hydrogen production process units (not including hydrogen produced from catalytic reforming units) following the calculation methodologies, monitoring and QA/QC methods, missing data procedures, reporting requirements, and recordkeeping requirements of subpart P of this part.

■ 57. Section 98.253 is amended by:

■ a. Revising the parameter ''$EmF_{CH4}$'' to Equation Y–4 in paragraph (b)(2) and ''$EmF_{N2O}$'' to Equation Y–5 in paragraph (b)(3).

■ b. Revising paragraphs (f)(2) and (3).

■ c. Revising paragraph (f)(4) introductory text and the parameters ''$F_{SG}$'' and ''$MF_c$'' to Equation Y–12.

■ d. Revising paragraphs (j) introductory text, (k) introductory text, and (m) introductory text.

The revisions read as follows:

**§ 98.253 Calculating GHG emissions.**

* * * * *

(b) * * *

(2) * * *

* * * * *

$EmF_{CH4}$ = Default $CH_4$ emission factor for ''Fuel Gas'' from Table C–2 of subpart C of this part (General Stationary Fuel Combustion Sources) (kg $CH_4$/MMBtu).

* * * * *

(3) * * *

* * * * *

$EmF_{N2O}$ = Default $N_2O$ emission factor for ''Fuel Gas'' from Table C–2 of subpart C of this part (General Stationary Fuel Combustion Sources) (kg $N_2O$/MMBtu).

* * * * *

(f) * * *

(2) Flow measurement. If you have a continuous flow monitor on the sour gas feed to the sulfur recovery plant or the sour gas feed sent for off-site sulfur recovery, you must use the measured flow rates when the monitor is operational to calculate the sour gas flow rate. If you do not have a continuous flow monitor on the sour gas feed to the sulfur recovery plant or the sour gas feed sent for off-site sulfur recovery, you must use engineering calculations, company records, or similar estimates of volumetric sour gas flow.

(3) Carbon content. If you have a continuous gas composition monitor capable of measuring carbon content on the sour gas feed to the sulfur recovery plant or the sour gas feed sent for off-site for sulfur recovery, or if you monitor gas composition for carbon content on a routine basis, you must use the measured carbon content value. Alternatively, you may develop a site-specific carbon content factor using limited measurement data or engineering estimates or use the default factor of 0.20.

(4) Calculate the $CO_2$ emissions from each on-site sulfur recovery plant and for sour gas sent off-site for sulfur recovery using Equation Y–12 of this section.

* * * * *

$F_{SG}$ = Volumetric flow rate of sour gas (including sour water stripper gas) fed to the sulfur recovery plant or the sour gas feed sent off-site for sulfur recovery (scf/year).

* * * * *

$MF_C$ = Mole fraction of carbon in the sour gas fed to the sulfur recovery plant or the sour gas feed sent off-site for sulfur recovery (kg-mole C/kg-mole gas); default = 0.20.

* * * * *

(j) For each process vent not covered in paragraphs (a) through (i) of this section that can reasonably be expected to contain greater than 2 percent by volume $CO_2$ or greater than 0.5 percent by volume of $CH_4$ or greater than 0.01 percent by volume (100 parts per million) of $N_2O$, calculate GHG emissions using Equation Y–19 of this section. You must also use Equation Y–19 of this section to calculate $CH_4$ emissions for catalytic reforming unit depressurization and purge vents when methane is used as the purge gas, $CH_4$ emissions if you elected to use the method in paragraph (i)(1) of this section, and $CO_2$ and/or $CH_4$ emissions, as applicable, if you elected this method as an alternative to the methods in paragraphs (f), (h), or (k) of this section.

* * * * *

(k) For uncontrolled blowdown systems, you must calculate $CH_4$ emissions either using the methods for process vents in paragraph (j) of this section regardless of the $CH_4$ concentration or using Equation Y–20 of this section. Blowdown systems where the uncondensed gas stream is routed to a flare or similar control device are considered to be controlled and are not required to estimate emissions under this paragraph (k).

* * * * *

(m) For storage tanks, except as provided in paragraph (m)(3) of this section, calculate $CH_4$ emissions using the applicable methods in paragraphs (m)(1) and (2) of this section.

* * * * *

■ 58. Section 98.256 is amended by:

■ a. Revising paragraphs (f)(6), (h) introductory text, and (h)(2) through (6).

■ b. Adding paragraph (j)(10).

■ c. Revising paragraph (k)(4).

■ d. Adding paragraph (k)(6).

■ e. Revising paragraph (o)(4)(vi).

■ f. Removing and reserving paragraphs (o)(5) through (7).

The revisions and additions read as follows:

**§ 98.256 Data reporting requirements.**

* * * * *

(f) * * *

(6) If you use a CEMS, the relevant information required under § 98.36 for the Tier 4 Calculation Methodology, the $CO_2$ annual emissions as measured by the CEMS (unadjusted to remove $CO_2$ combustion emissions associated with additional units, if present) and the process $CO_2$ emissions as calculated according to § 98.253(c)(1)(ii). Report the $CO_2$ annual emissions associated with sources other than those from the coke burn-off in accordance with the

applicable subpart (*e.g.,* subpart C of this part in the case of a CO boiler).

* * * * *

(h) For on-site sulfur recovery plants and for emissions from sour gas sent off-site for sulfur recovery, the owner and operator shall report:

* * * * *

(2) For each on-site sulfur recovery plant, the maximum rated throughput (metric tons sulfur produced/stream day), a description of the type of sulfur recovery plant, and an indication of the method used to calculate $CO_2$ annual emissions for the sulfur recovery plant (*e.g.,* $CO_2$ CEMS, Equation Y–12, or process vent method in § 98.253(j)).

(3) The calculated $CO_2$ annual emissions for each on-site sulfur recovery plant, expressed in metric tons. The calculated annual $CO_2$ emissions from sour gas sent off-site for sulfur recovery, expressed in metric tons.

(4) If you use Equation Y–12 of this subpart, the annual volumetric flow to the on-site and off-site sulfur recovery plant (in scf/year), the molar volume conversion factor (in scf/kg-mole), and the annual average mole fraction of carbon in the sour gas (in kg-mole C/kg-mole gas).

(5) If you recycle tail gas to the front of an on-site sulfur recovery plant, indicate whether the recycled flow rate and carbon content are included in the measured data under § 98.253(f)(2) and (3). Indicate whether a correction for $CO_2$ emissions in the tail gas was used in Equation Y–12. If so, then report the value of the correction, the annual volume of recycled tail gas (in scf/year) and the annual average mole fraction of carbon in the tail gas (in kg-mole C/kg-mole gas). Indicate whether you used the default (95%) or a unit specific correction, and if a unit specific correction is used, report the approach used.

(6) If you use a CEMS, the relevant information required under § 98.36 for the Tier 4 Calculation Methodology, the $CO_2$ annual emissions as measured by the CEMS and the annual process $CO_2$ emissions calculated according to § 98.253(f)(1). Report the $CO_2$ annual emissions associated with fuel combustion in accordance with subpart C of this part (General Stationary Fuel Combustion Sources).

* * * * *

(j) * * *

(10) If you use Equation Y–19 of this subpart, the relevant information required under paragraph (l)(5) of this section.

(k) * * *

(4) For each set of coking drums that are the same dimensions: The number of coking drums in the set, the height and diameter of the coke drums (in feet), the cumulative number of vessel openings for all delayed coking drums in the set, the typical venting pressure (in psig), void fraction (in cf gas/cf of vessel), and the mole fraction of methane in coking gas (in kg-mole $CH_4$/kg-mole gas, wet basis).

* * * * *

(6) If you use Equation Y–19 of this subpart, the relevant information required under paragraph (l)(5) of this section for each set of coke drums or vessels of the same size.

* * * * *

(o) * * *

(4) * * *

(vi) If you did not use Equation Y–23, the tank-specific methane composition data and the annual gas generation volume (scf/yr) used to estimate the cumulative $CH_4$ emissions for storage tanks used to process unstabilized crude oil.

* * * * *

## Subpart Z—[AMENDED]

■ 59. Section 98.263 is amended by revising paragraph (b)(1)(ii) introductory text and the parameter ''$CO_{2n,i}$'' of Equation Z–1b to read as follows:

### § 98.263 Calculating GHG emissions.

* * * * *

(b) * * *

(1) * * *

(ii) If your process measurement provides the $CO_2$ content directly as an output, calculate and report the process $CO_2$ emissions from each wet-process phosphoric acid process line using Equation Z–1b of this section:

* * * * *

$CO_{2n,i}$ = Carbon dioxide content of a grab sample batch of phosphate rock by origin i obtained during month n (percent by weight, expressed as a decimal fraction).

* * * * *

■ 60. Section 98.264 is amended by revising paragraphs (a) and (b) to read as follows:

### § 98.264 Monitoring and QA/QC requirements.

(a) You must obtain a monthly grab sample of phosphate rock directly from the rock being fed to the process line before it enters the mill using one of the following methods. You may conduct the representative bulk sampling using a method published by a consensus standards organization, or you may use industry consensus standard practice methods, including but not limited to the Phosphate Mining States Methods Used and Adopted by the Association of Fertilizer and Phosphate Chemists (AFPC). If phosphate rock is obtained from more than one origin in a month, you must obtain a sample from each origin of rock or obtain a composite representative sample.

(b) You must determine the carbon dioxide or inorganic carbon content of each monthly grab sample of phosphate rock (consumed in the production of phosphoric acid). You may use a method published by a consensus standards organization, or you may use industry consensus standard practice methods, including but not limited to the Phosphate Mining States Methods Used and Adopted by AFPC.

* * * * *

■ 61. Section 98.265 is revised to read as follows:

### § 98.265 Procedures for estimating missing data.

A complete record of all measured parameters used in the GHG emissions calculations is required. Therefore, whenever a quality-assured value of a required parameter is unavailable, a substitute data value for the missing parameter must be used in the calculations as specified in paragraphs (a) and (b) of this section.

(a) For each missing value of the inorganic carbon content or $CO_2$ content of phosphate rock (by origin), you must use the appropriate default factor provided in Table Z–1 of this subpart. Alternatively, you must determine a substitute data value by calculating the arithmetic average of the quality-assured values of inorganic carbon contents or $CO_2$ contents of phosphate rock of origin i (see Equation Z–1a or Z–1b of this subpart) from samples immediately preceding and immediately following the missing data incident. If no quality-assured data on inorganic carbon contents or $CO_2$ contents of phosphate rock of origin i are available prior to the missing data incident, the substitute data value shall be the first quality-assured value for inorganic carbon contents or $CO_2$ contents for phosphate rock of origin i obtained after the missing data period.

(b) For each missing value of monthly mass consumption of phosphate rock (by origin), you must use the best available estimate based on all available process data or data used for accounting purposes.

■ 62. Section 98.266 is amended by revising paragraphs (a), (b), (d), and (f)(5), (6), and (8) to read as follows:

### § 98.266 Data reporting requirements.

* * * * *

(a) Annual phosphoric acid production, by origin of the phosphate rock (tons).

(b) Annual phosphoric acid production capacity (tons).

* * * * *

(d) Annual phosphate rock consumption from monthly measurement records by origin (tons).

* * * * *

(f) * * *

(5) Monthly inorganic carbon content of phosphate rock for each wet-process phosphoric acid process line for which Equation Z–1a is used (percent by weight, expressed as a decimal fraction), or $CO_2$ content (percent by weight, expressed as a decimal fraction) for which Equation Z–1b is used.

(6) Monthly mass of phosphate rock consumed, by origin, in production for each wet-process phosphoric acid process line (tons).

* * * * *

(8) Number of times missing data procedures were used to estimate phosphate rock consumption (months), inorganic carbon contents of the phosphate rock (months), and $CO_2$ contents of the phosphate rock (months).

* * * * *

■ 63. Section 98.267 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 98.267 Records that must be retained.**

* * * * *

(a) Monthly mass of phosphate rock consumed by origin (tons).

* * * * *

(c) Documentation of the procedures used to ensure the accuracy of monthly phosphate rock consumption by origin.

## Subpart AA—[AMENDED]

■ 64. Section 98.273 is amended by revising paragraph (a)(3) introductory text and the parameter ''(EF)'' of Equation AA–1 to read as follows:

**§ 98.273 Calculating GHG emissions.**

(a) * * *

(3) Calculate biogenic $CO_2$ emissions and emissions of $CH_4$ and $N_2O$ from biomass using measured quantities of spent liquor solids fired, site-specific HHV, and default emissions factors, according to Equation AA–1 of this section:

* * * * *

(EF) = Default emission factor for $CO_2$, $CH_4$, or $N_2O$, from Table AA–1 of this subpart (kg $CO_2$, $CH_4$, or $N_2O$ per mmBtu).

* * * * *

■ 65. Section 98.276 is amended by revising paragraphs (e) and (k) to read as follows:

**§ 98.276 Data reporting requirements.**

* * * * *

(e) The default emission factor for $CO_2$, $CH_4$, or $N_2O$, used in Equation AA–1 of this subpart (kg $CO_2$, $CH_4$, or $N_2O$ per mmBtu).

* * * * *

(k) Total annual production of unbleached virgin chemical pulp produced onsite during the reporting year in air-dried metric tons per year. This total annual production value is the sum of all kraft, semichemical, soda, and sulfite pulp produced onsite, prior to bleaching, through all virgin pulping lines. Do not include mechanical pulp or secondary fiber repulped for paper production in the virgin pulp production total.

■ 66. Table AA–1 is revised to read as follows:

TABLE AA–1 TO SUBPART AA OF PART 98—KRAFT PULPING LIQUOR EMISSIONS FACTORS FOR BIOMASS-BASED $CO_2$, $CH_4$, AND $N_2O$

| Wood furnish | Biomass-based emissions factors (kg/mmBtu HHV) | | |
|---|---|---|---|
| | [a] $CO_2$ | $CH_4$ | $N_2O$ |
| North American Softwood | 94.4 | 0.0019 | 0.00042 |
| North American Hardwood | 93.7 | 0.0019 | 0.00042 |
| Bagasse | 95.5 | 0.0019 | 0.00042 |
| Bamboo | 93.7 | 0.0019 | 0.00042 |
| Straw | 95.1 | 0.0019 | 0.00042 |

[a] Includes emissions from both the recovery furnace and pulp mill lime kiln.

■ 67. Table AA–2 is revised to read as follows:

TABLE AA–2 TO SUBPART AA OF PART 98—KRAFT LIME KILN AND CALCINER EMISSIONS FACTORS FOR $CH_4$ AND $N_2O$

| Fuel | Fossil fuel-based emissions factors (kg/mmBtu HHV) | | | |
|---|---|---|---|---|
| | Kraft lime kilns | | Kraft calciners | |
| | $CH_4$ | $N_2O$ | $CH_4$ | $N_2O$ |
| Residual Oil (any type) | 0.0027 | 0 | 0.0027 | 0.0003 |
| Distillate Oil (any type) | 0.0027 | 0 | 0.0027 | 0.0004 |
| Natural Gas | 0.0027 | 0 | 0.0027 | 0.0001 |
| Biogas | 0.0027 | 0 | 0.0027 | 0.0001 |
| Petroleum coke | 0.0027 | 0 | [a]NA | [a]NA |
| Other Fuels | See Table C–2 | 0 | See Table C–2 | See Table C–2 |

[a] Emission factors for kraft calciners are not available.

## Subpart BB—[AMENDED]

■ 68. Section 98.282 is amended by revising paragraph (a) to read as follows:

### § 98.282 GHGs to report.

* * * * *

(a) $CO_2$ process emissions from all silicon carbide process units or furnaces combined.

* * * * *

■ 69. Section 98.283 is amended by:

■ a. Revising the introductory text.

■ b. Revising paragraphs (a), (b) introductory text, and (b)(2) introductory text.

■ c. Revising the parameter ''$T_n$'' in Equation BB–2 in paragraph (b)(2).

■ d. Removing paragraph (d).

The revisions read as follows:

### § 98.283 Calculating GHG emissions.

You must calculate and report the combined annual process $CO_2$ emissions from all silicon carbide process units and production furnaces using the procedures in either paragraph (a) or (b) of this section.

(a) Calculate and report under this subpart the combined annual process $CO_2$ emissions by operating and maintaining CEMS according to the Tier 4 Calculation Methodology specified in § 98.33(a)(4) and all associated requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources).

(b) Calculate and report under this subpart the combined annual process $CO_2$ emissions using the procedures in paragraphs (b)(1) and (b)(2) of this section.

* * * * *

(2) Calculate annual $CO_2$ process emissions from the silicon carbide production facility according to Equation BB–2 of this section:

* * * * *

$T_n$ = Petroleum coke consumption in calendar month n (tons).

* * * * *

■ 70. Section 98.286 is amended by revising paragraph (b) introductory text to read as follows:

### § 98.286 Data reporting requirements.

* * * * *

(b) If a CEMS is not used to measure process $CO_2$ emissions, you must report the information in paragraph (b)(1) through (8) of this section for all silicon carbide process units or production furnaces combined:

* * * * *

## Subpart DD—[AMENDED]

■ 71. Section 98.304 is amended by revising paragraphs (c)(1) and (2) to read as follows:

### § 98.304 Monitoring and QA/QC requirements.

* * * * *

(c) * * *

(1) Ensure that cylinders returned to the gas supplier are consistently weighed on a scale that is certified to be accurate and precise to within 2 pounds of true weight and is periodically recalibrated per the manufacturer's specifications. Either measure residual gas (the amount of gas remaining in returned cylinders) or have the gas supplier measure it. If the gas supplier weighs the residual gas, obtain from the gas supplier a detailed monthly accounting, within ± 2 pounds, of residual gas amounts in the cylinders returned to the gas supplier.

(2) Ensure that cylinders weighed for the beginning and end of year inventory measurements are weighed on a scale that is certified to be accurate and precise to within 2 pounds of true weight and is periodically recalibrated per the manufacturer's specifications. All scales used to measure quantities that are to be reported under § 98.306 must be calibrated using calibration procedures specified by the scale manufacturer. Calibration must be performed prior to the first reporting year. After the initial calibration, recalibration must be performed at the minimum frequency specified by the manufacturer.

* * * * *

## Subpart FF—[AMENDED]

■ 72. Section 98.320 is amended by revising paragraphs (b)(1) and (2) to read as follows:

### § 98.320 Definition of the source category.

* * * * *

(b) * * *

(1) Each ventilation system shaft or vent hole, including both those points where mine ventilation air is emitted and those where it is sold, used onsite, or otherwise destroyed (including by ventilation air methane (VAM) oxidizers).

(2) Each degasification system well or gob gas vent hole, including degasification systems deployed before, during, or after mining operations are conducted in a mine area. This includes both those wells and vent holes where coal bed gas is emitted, and those where the gas is sold, used onsite, or otherwise destroyed (including by flaring).

* * * * *

■ 73. Section 98.322 is amended by revising paragraphs (b) and (d) to read as follows:

### § 98.322 GHGs to report.

* * * * *

(b) You must report $CH_4$ destruction from systems where gas is sold, used onsite, or otherwise destroyed (including by VAM oxidation and by flaring).

* * * * *

(d) You must report under this subpart the $CO_2$ emissions from coal mine gas $CH_4$ destruction occurring at the facility, where the gas is not a fuel input for energy generation or use (*e.g.,* flaring and VAM oxidation).

* * * * *

■ 74. Section 98.323 is amended by:

■ a. Revising parameters ''V'', ''MCF'', ''($f_{H2O}$)'' and ''P'' of Equation FF–1 in paragraph (a).

■ b. Revising paragraph (a)(2).

■ c. Revising Equation FF–3 and revising parameters ''$V_i$'', ''$MCF_i$'', ''($f_{H2O}$)'', and ''$P_i$'' of Equation FF–3 in paragraph (b).

■ d. Revising paragraph (b)(1).

■ e. Removing parameter ''$CH_{4D}$'' of Equation FF–4 of paragraph (b)(2) and adding parameter ''$(CH_{4D})_{i,j}$'' in its place.

■ f. Revising paragraph (c) introductory text and Equation FF–6 in paragraph (c)(1).

The revisions read as follows:

### § 98.323 Calculating GHG emissions.

(a) * * *

V = Volumetric flow rate for the quarter (acfm) based on sampling or a flow rate meter. If a flow rate meter is used and the meter automatically corrects to standard temperature and pressure, then use scfm and replace ''520°R/T × P/1 atm'' with ''1''.

MCF = Moisture correction factor for the measurement period, volumetric basis.

= 1 when V and C are measured on a dry basis or if both are measured on a wet basis.

= 1-($f_{H2O}$) when V is measured on a wet basis and C is measured on a dry basis.

= 1/[1-($f_{H2O}$)] when V is measured on a dry basis and C is measured on a wet basis.

($f_{H2O}$) = Moisture content of the $CH_4$ emitted during the measurement period, volumetric basis (cubic feet water per cubic feet emitted gas).

* * * * *

P = Absolute pressure at which flow is measured (atm) for the quarter. The annual average barometric pressure from the nearest NOAA weather service station may be used as a default.

* * * * *

(2) Values of V, C, T, P, and ($f_{H2O}$), if applicable, must be based on measurements taken at least once each

quarter with no fewer than 6 weeks between measurements. If measurements are taken more frequently than once per quarter, then use the average value for all measurements taken. If continuous measurements are taken, then use the average value over the time period of continuous monitoring.

* * * * *

(b) * * *

$$CH_{4D} = \sum_{i=1}^{n}\left(V_i * MCF_i * \frac{C_i}{100\%} * 0.0423 \frac{520^\circ R}{T_i} * \frac{P_i}{1\,atm} * 1{,}440 * \frac{0.454}{1{,}000}\right) \quad \text{(Eq. FF-3)}$$

* * * * *

$V_i$ = Measured volumetric flow rate for the days in the week when the degasification system is in operation at that monitoring point, based on sampling or a flow rate meter (acfm). If a flow rate meter is used and the meter automatically corrects to standard temperature and pressure, then use scfm and replace ''520°R/$T_i$× $P_i$/1 atm'' with ''1''.

$MCF_i$ = Moisture correction factor for the measurement period, volumetric basis.
= 1 when $V_i$ and $C_i$ are measured on a dry basis or if both are measured on a wet basis.
= 1-$(f_{H2O})_I$ when $V_i$ is measured on a wet basis and $C_i$ is measured on a dry basis.
= 1/[1-$(f_{H2O})_i$] when $V_i$ is measured on a dry basis and $C_i$ is measured on a wet basis.

$(f_{H2O})$ = Moisture content of the $CH_4$ emitted during the measurement period, volumetric basis (cubic feet water per cubic feet emitted gas).

* * * * *

$P_i$ = Absolute pressure at which flow is measured (atm).

* * * * *

(1) Values for V, C, T, P, and $(f_{H2O})$, if applicable, must be based on measurements taken at least once each calendar week with at least 3 days between measurements. If measurements are taken more frequently than once per week, then use the average value for all measurements taken that week. If continuous measurements are taken, then use the average values over the time period of continuous monitoring when the continuous monitoring equipment is properly functioning.

(2) * * *

* * * * *

$(CH_{4D})_{i,j}$ = Weekly $CH_4$ liberated from a degasification monitoring point (metric tons $CH_4$).

* * * * *

(c) If gas from a degasification system or ventilation system is sold, used onsite, or otherwise destroyed (including by flaring or VAM oxidation), you must calculate the quarterly $CH_4$ destroyed for each destruction device and each point of offsite transport to a destruction device, using Equation FF–5 of this section. You must measure $CH_4$ content and flow rate according to the provisions in § 98.324, and calculate the methane routed to the destruction device ($CH_4$) using either Equation FF–1 or Equation FF–4 of this section, as applicable.

* * * * *

(1) * * *

$$CH_{4\,Destroyed\ Total} = \sum_{i=1}^{d}\left(CH_{4\,Destroyed}\right)_i \quad \text{(Eq. FF-6)}$$

* * * * *

■ 75. Section 98.324 is amended by revising paragraphs (b) introductory text and (c)(2) to read as follows:

**§ 98.324 Monitoring and QA/QC requirements.**

* * * * *

(b) For $CH_4$ liberated from ventilation systems, determine whether $CH_4$ will be monitored from each ventilation shaft and vent hole, from a centralized monitoring point, or from a combination of the two options. Operators are allowed flexibility for aggregating emissions from more than one ventilation point, as long as emissions from all are addressed, and the methodology for calculating total emissions documented. Monitor by one of the following options:

* * * * *

(c) * * *

(2) Collect weekly (once each calendar week, with at least three days between measurements) or more frequent samples, for all degasification wells and gob gas vent holes. Determine weekly or more frequent flow rates, methane concentration, temperature, and pressure from these degasification wells and gob gas vent holes. Methane composition should be determined either by submitting samples to a lab for analysis, or from the use of methanometers at the degasification monitoring site. Follow the sampling protocols for sampling of methane emissions from ventilation shafts, as described in § 98.324(b)(1). You must record the date of sampling, flow, temperature, pressure, and moisture measurements, the methane concentration (percent), the bottle number of samples collected, and the location of the measurement or collection.

* * * * *

■ 76. Section 98.326 is amended by revising paragraphs (a), (f), (h), (i), (j), (o), and (r), and adding paragraph (t) to read as follows:

**§ 98.326 Data reporting requirements.**

* * * * *

(a) Quarterly $CH_4$ liberated from each ventilation monitoring point, (metric tons $CH_4$).

* * * * *

(f) Quarterly volumetric flow rate for each ventilation monitoring point and units of measure (scfm or acfm), date and location of each measurement, and method of measurement (quarterly sampling or continuous monitoring), used in Equation FF–1 of this subpart.

* * * * *

(h) Weekly volumetric flow rate used to calculate $CH_4$ liberated from degasification systems and units of measure (acfm or scfm), and method of measurement (sampling or continuous monitoring), used in Equation FF–3 of this subpart.

(i) Quarterly $CH_4$ concentration (%) used to calculate $CH_4$ liberated from degasification systems and if the data is based on CEMS or weekly sampling.

(j) Weekly volumetric flow rate used to calculate $CH_4$ destruction for each destruction device and each point of

offsite transport, and units of measure (acfm or scfm).

* * * * *

(o) Temperatures (°R), pressure (atm), moisture content, and the moisture correction factor (if applicable) used in Equation FF–1 and FF–3 of this subpart; and the gaseous organic concentration correction factor, if Equation FF–9 was required.

* * * * *

(r) Identification information and description for each well, shaft, and vent hole, including paragraphs (r)(1) through (r)(3) of this section:

(1) Indication of whether the well, shaft, or vent hole is monitored individually, or as part of a centralized monitoring point. Note which method (sampling or continuous monitoring) was used.

(2) Start date and close date of each well, shaft, and vent hole.

(3) Number of days the well, shaft, or vent hole was in operation during the reporting year.

* * * * *

(t) Mine Safety and Health Administration (MSHA) identification for this coal mine.

## Subpart HH—[AMENDED]

■ 77. Section 98.340 is amended by revising paragraph (a) to read as follows:

### § 98.340 Definition of the source category.

(a) This source category applies to municipal solid waste (MSW) landfills that accepted waste on or after January 1, 1980, unless all three of the following conditions apply.

(1) The MSW landfill did not receive waste on or after January 1, 2013.

(2) The MSW landfill had $CH_4$ generation as determined using Equation HH–5 and, if applicable, Equation HH–7 of this subpart of less than 1,190 metric tons of $CH_4$ in the 2013 reporting year.

(3) The owner or operator of the MSW landfill was not required to submit an annual report under any requirement of this part in any reporting year prior to 2013.

* * * * *

■ 78. Section 98.343 is amended by:

■ a. Revising the parameters ''DOC'' and ''F'' of Equation HH–1 in paragraph (a)(1).

■ b. Revising Equation HH–4 and the parameters ''N'' and ''0.0423'' of Equation HH–4 in paragraph (b)(1).

■ c. Revising paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii)(A), and (b)(2)(iii)(B).

■ d. Revising parameter ''OX'' of Equation HH–5 in paragraph (c)(1).

■ e. Revising paragraphs (c)(3)(i) and (ii).

The revisions read as follows:

### § 98.343 Calculating GHG emissions.

(a) * * *

(1) * * *

* * * * *

DOC = Degradable organic carbon from Table HH–1 of this subpart [fraction (metric tons C/metric ton waste)].

* * * * *

F = Fraction by volume of $CH_4$ in landfill gas from measurement data for the current reporting year, if available (fraction, dry basis, corrected to 0% oxygen); otherwise, use the default of 0.5.

* * * * *

(b) * * *

(1) * * *

$$R = \sum_{n=1}^{N}\left( (V)_n \times (K_{MC})_n \times \frac{(C_{CH4})_n}{100\%} \times 0.0423 \times \frac{520°R}{(T)_n} \times \frac{(P)_n}{1\,atm} \times \frac{0.454}{1{,}000} \right) \quad \text{(Eq. HH-4)}$$

* * * * *

N = Total number of measurement periods in a year. Use daily averaging periods for a continuous monitoring system and N = 365 (or N = 366 for leap years). For monthly sampling, as provided in paragraph (b)(2) of this section, use N=12.

* * * * *

0.0423 = Density of $CH_4$ lb/cf at 520°R or 60 degrees Fahrenheit and 1 atm.

* * * * *

(2) * * *

(i) Continuously monitor gas flow rate and determine the cumulative volume of landfill gas each month and the cumulative volume of landfill gas each year that is collected and routed to a destruction device (before any treatment equipment). Under this option, the gas flow meter is not required to automatically correct for temperature, pressure, or, if necessary, moisture content. If the gas flow meter is not equipped with automatic correction for temperature, pressure, or, if necessary, moisture content, you must determine these parameters as specified in paragraph (b)(2)(iii) of this section.

(ii) Determine the $CH_4$ concentration in the landfill gas that is collected and routed to a destruction device (before any treatment equipment) in a location near or representative of the location of the gas flow meter at least once each calendar month; if only one measurement is made each calendar month, there must be at least fourteen days between measurements.

(iii) * * *

(A) Determine the temperature and pressure in the landfill gas that is collected and routed to a destruction device (before any treatment equipment) in a location near or representative of the location of the gas flow meter at least once each calendar month; if only one measurement is made each calendar month, there must be at least fourteen days between measurements.

(B) If the $CH_4$ concentration is determined on a dry basis and flow is determined on a wet basis or $CH_4$ concentration is determined on a wet basis and flow is determined on a dry basis, and the flow meter does not automatically correct for moisture content, determine the moisture content in the landfill gas that is collected and routed to a destruction device (before any treatment equipment) in a location near or representative of the location of the gas flow meter at least once each calendar month; if only one measurement is made each calendar month, there must be at least fourteen days between measurements.

(c) * * *

(1) * * *

* * * * *

OX = Oxidation fraction. Use the appropriate oxidation fraction default value from Table HH–4 of this subpart.

* * * * *

(3) * * *

(i) Calculate $CH_4$ emissions from the modeled $CH_4$ generation and measured $CH_4$ recovery using Equation HH–6 of this section.

$$\text{Emissions} = \left[\left(G_{CH4} - \sum_{n-1}^{N} R_n\right) \times (1 - OX) + \sum_{n-1}^{N} \left\{R_n \times \left(1 - \left(DE_n \times f_{Dest,n}\right)\right)\right\}\right] \quad \text{(Eq. HH-6)}$$

Where:

Emissions = Methane emissions from the landfill in the reporting year (metric tons $CH_4$).

$G_{CH4}$ = Modeled methane generation rate in reporting year from Equation HH–1 of this section or the quantity of recovered $CH_4$ from Equation HH–4 of this section, whichever is greater (metric tons $CH_4$).

N = Number of landfill gas measurement locations (associated with a destruction device or gas sent off-site). If a single monitoring location is used to monitor volumetric flow and $CH_4$ concentration of the recovered gas sent to one or multiple destruction devices, then N=1.

$R_n$ = Quantity of recovered $CH_4$ from Equation HH–4 of this section for the $n^{th}$ measurement location (metric tons).

OX = Oxidation fraction. Use the appropriate oxidation fraction default value from Table HH–4 of this subpart.

$DE_n$ = Destruction efficiency (lesser of manufacturer's specified destruction efficiency and 0.99) for the $n^{th}$ measurement location. If the gas is transported off-site for destruction, use DE = 1. If the volumetric flow and $CH_4$ concentration of the recovered gas is measured at a single location providing landfill gas to multiple destruction devices (including some gas destroyed on-site and some gas sent off-site for destruction), calculate $DE_n$ as the arithmetic average of the DE values determined for each destruction device associated with that measurement location.

$f_{Dest,n}$ = Fraction of hours the destruction device associated with the $n^{th}$ measurement location was operating during active gas flow calculated as the annual operating hours for the destruction device divided by the annual hours flow was sent to the destruction device as measured at the $n^{th}$ measurement location. If the gas is transported off-site for destruction, use $f_{Dest,n}$= 1. If the volumetric flow and $CH_4$ concentration of the recovered gas is measured at a single location providing landfill gas to multiple destruction devices (including some gas destroyed on-site and some gas sent off-site for destruction), calculate $f_{Dest,n}$ as the arithmetic average of the $f_{Dest}$ values determined for each destruction device associated with that measurement location.

(ii) Calculate $CH_4$ generation and $CH_4$ emissions using measured $CH_4$ recovery and estimated gas collection efficiency and Equations HH–7 and HH–8 of this section.

$$MG = \frac{1}{CE} \sum_{n=1}^{N} \left[\frac{R_n}{f_{Rec,n}}\right] \times (1 - OX) \quad \text{(Eq. HH-7)}$$

$$\text{Emissions} = \left[\left(\frac{1}{CE}\left\{\sum_{n-1}^{N}\left[\frac{R_n}{f_{Rec,n}}\right]\right\} - \sum_{n-1}^{N} R_n\right) \times (1 - OX) + \sum_{n=1}^{N} \left\{R_n \times \left(1 - \left(DE_n \times f_{Dest,n}\right)\right)\right\}\right] \quad \text{(Eq. HH-8)}$$

Where:

MG = Methane generation, adjusted for oxidation, from the landfill in the reporting year (metric tons $CH_4$).

Emissions = Methane emissions from the landfill in the reporting year (metric tons $CH_4$).

N = Number of landfill gas measurement locations (associated with a destruction device or gas sent off-site). If a single monitoring location is used to monitor volumetric flow and $CH_4$ concentration of the recovered gas sent to one or multiple destruction devices, then N=1.

$R_n$ = Quantity of recovered $CH_4$ from Equation HH–4 of this section for the $n^{th}$ measurement location (metric tons $CH_4$).

CE = Collection efficiency estimated at landfill, taking into account system coverage, operation, and cover system materials from Table HH–3 of this subpart. If area by soil cover type information is not available, use default value of 0.75 (CE4 in table HH–3 of this subpart) for all areas under active influence of the collection system.

$f_{Rec,n}$ = Fraction of hours the recovery system associated with the $n^{th}$ measurement location was operating (annual operating hours/8760 hours per year or annual operating hours/8784 hours per year for a leap year).

OX = Oxidation fraction. Use appropriate oxidation fraction default value from Table HH–4 of this subpart.

$DE_n$ = Destruction efficiency, (lesser of manufacturer's specified destruction efficiency and 0.99) for the $n^{th}$ measurement location. If the gas is transported off-site for destruction, use DE = 1. If the volumetric flow and $CH_4$ concentration of the recovered gas is measured at a single location providing landfill gas to multiple destruction devices (including some gas destroyed on-site and some gas sent off-site for destruction), calculate $DE_n$ as the arithmetic average of the DE values determined for each destruction device associated with that measurement location.

$f_{Dest,n}$ = Fraction of hours the destruction device associated with the $n^{th}$ measurement location was operating during active gas flow calculated as the annual operating hours for the destruction device divided by the annual hours flow was sent to the destruction device as measured at the $n^{th}$ measurement location. If the gas is transported off-site for destruction, use $f_{Dest,n}$= 1. If the volumetric flow and $CH_4$ concentration of the recovered gas is measured at a single location providing landfill gas to multiple destruction devices (including some gas destroyed on-site and some gas sent off-site for destruction), calculate $f_{Dest,n}$ as the arithmetic average of the $f_{Dest}$ values determined for each destruction device associated with that measurement location.

■ 79. Section 98.344 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

**§ 98.344 Monitoring and QA/QC requirements.**

* * * * *

(e) For landfills electing to measure the fraction by volume of $CH_4$ in landfill gas (F), follow the requirements in paragraphs (e)(1) and (2) of this section.

(1) Use a gas composition monitor capable of measuring the concentration of $CH_4$ on a dry basis that is properly operated, calibrated, and maintained according to the requirements specified in paragraph (b) of this section. You must either use a gas composition monitor that is also capable of measuring the $O_2$ concentration correcting for excess (infiltration) air or you must operate, maintain, and

calibrate a second monitor capable of measuring the $O_2$ concentration on a dry basis according to the manufacturer's specifications.

(2) Use Equation HH–10 of this section to correct the measured $CH_4$ concentration to 0% oxygen. If multiple $CH_4$ concentration measurements are made during the reporting year, determine F separately for each measurement made during the reporting year, and use the results to determine the arithmetic average value of F for use in Equation HH–1 of this part.

$$F = \left(\frac{C_{CH4}}{100\%}\right) \times \left[20.9_c \Big/ \left(20.9 - \%O_2\right)\right] \qquad \text{(Eq. HH-10)}$$

Where:

F = Fraction by volume of $CH_4$ in landfill gas (fraction, dry basis, corrected to 0% oxygen).

$C_{CH4}$ = Measured $CH_4$ concentration in landfill gas (volume %, dry basis).

$20.9_c$ = Defined $O_2$ correction basis, (volume %, dry basis).

20.9 = $O_2$ concentration in air (volume %, dry basis).

$\%O_2$ = Measured $O_2$ concentration in landfill gas (volume %, dry basis).

(f) The owner or operator shall document the procedures used to ensure the accuracy of the estimates of disposal quantities and, if applicable, gas flow rate, gas composition, temperature, pressure, and moisture content measurements. These procedures include, but are not limited to, calibration of weighing equipment, fuel flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices, and the technical basis for these estimates shall be recorded.

■ 80. Section 98.345 is amended by revising paragraph (c) to read as follows:

**§ 98.345 Procedures for estimating missing data.**

* * * * *

(c) For missing daily waste disposal quantity data for disposal in the reporting year, the substitute value shall be the average daily waste disposal quantity for that day of the week as measured on the week before and week after the missing daily data.

■ 81. Section 98.346 is amended by revising paragraphs (d)(1), (e), (h), (i)(5) through (8), and (i)(10) through (12) to read as follows:

**§ 98.346 Data reporting requirements.**

* * * * *

(d) * * *

(1) Degradable organic carbon (DOC) and fraction of DOC dissimilated ($DOC_F$) values used in the calculations.

* * * * *

(e) Fraction of $CH_4$ in landfill gas (F), an indication of whether the fraction of $CH_4$ was determined based on measured values or the default value, and the methane correction factor (MCF) used in the calculations. If an MCF other than the default of 1 is used, provide an indication of whether active aeration of the waste in the landfill was conducted during the reporting year, a description of the aeration system, including aeration blower capacity, the fraction of the landfill containing waste affected by aeration, the total number of hours during the year the aeration blower was operated, and other factors used as a basis for the selected MCF value.

* * * * *

(h) For landfills without gas collection systems, the annual methane emissions (i.e., the methane generation, adjusted for oxidation, calculated using Equation HH–5 of this subpart), reported in metric tons $CH_4$, the oxidation fraction used in the calculation, and an indication of whether passive vents and/or passive flares (vents or flares that are not considered part of the gas collection system as defined in § 98.6) are present at this landfill.

(i) * * *

(5) An indication of whether destruction occurs at the landfill facility, off-site, or both. If destruction occurs at the landfill facility, also report for each measurement location the number of destruction devices associated with that measurement location and the annual operating hours and the destruction efficiency (percent) for each destruction device associated with that measurement location.

(6) Annual quantity of recovered $CH_4$ (metric tons $CH_4$) calculated using Equation HH–4 of this subpart for each measurement location.

(7) A description of the gas collection system (manufacturer, capacity, and number of wells), the surface area (square meters) and estimated waste depth (meters) for each area specified in Table HH–3 to this subpart, the estimated gas collection system efficiency for landfills with this gas collection system, the annual operating hours of the gas collection system for each measurement location, and an indication of whether passive vents and/or passive flares (vents or flares that are not considered part of the gas collection system as defined in § 98.6) are present at the landfill.

(8) Methane generation corrected for oxidation calculated using Equation HH–5 of this subpart, reported in metric tons $CH_4$, and the oxidation fraction used in the calculation.

* * * * *

(10) Methane generation corrected for oxidation calculated using Equation HH–7 of this subpart, reported in metric tons $CH_4$, and the oxidation fraction used in the calculation.

(11) Methane emissions calculated using Equation HH–6 of this subpart, reported in metric tons $CH_4$, and the oxidation fraction used in the calculation.

(12) Methane emissions calculated using Equation HH–8 of this subpart, reported in metric tons $CH_4$, and the oxidation fraction used in the calculation.

■ 82. Section 98.348 is amended by adding definitions for ''Landfill capacity'' and ''Leachate recirculation'' in alphabetical order to read as follows:

**§ 98.348 Definitions.**

* * * * *

*Landfill capacity* means the maximum amount of solid waste a landfill can accept. For the purposes of this subpart, for landfills that have a permit, the *landfill capacity* can be determined in terms of volume or mass in the most recent permit issued by the state, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert from volume to mass to determine its capacity, the calculation must include a site-specific density.

*Leachate recirculation* means the practice of taking the leachate collected from the landfill and reapplying it to the landfill by any of one of a variety of methods, including pre-wetting of the waste, direct discharge into the working face, spraying, infiltration ponds, vertical injection wells, horizontal gravity distribution systems, and pressure distribution systems.

* * * * *

■ 83. Table HH–1 to Subpart HH is amended by revising the entry for ''OX'' to read as follows:

TABLE HH–1 TO SUBPART HH OF PART 98—EMISSIONS FACTORS, OXIDATION FACTORS AND METHODS

| Factor | Default value | Units |
|---|---|---|
| * * * * * | | |
| **Other parameters—All MSW landfills** | | |
| * * * * * | | |
| OX | See Table HH–4 of this subpart. | |
| * * * * * | | |

■ 84. Table HH–2 to Subpart HH is revised to read as follows:

TABLE HH–2 TO SUBPART HH OF PART 98—U.S. PER CAPITA WASTE DISPOSAL RATES

| Year | Waste per capita ton/cap/yr |
|---|---|
| 1950 | 0.63 |
| 1951 | 0.63 |
| 1952 | 0.63 |
| 1953 | 0.63 |
| 1954 | 0.63 |
| 1955 | 0.63 |
| 1956 | 0.63 |
| 1957 | 0.63 |
| 1958 | 0.63 |
| 1959 | 0.63 |
| 1960 | 0.63 |
| 1961 | 0.64 |
| 1962 | 0.64 |
| 1963 | 0.65 |
| 1964 | 0.65 |
| 1965 | 0.66 |
| 1966 | 0.66 |
| 1967 | 0.67 |
| 1968 | 0.68 |
| 1969 | 0.68 |
| 1970 | 0.69 |
| 1971 | 0.69 |
| 1972 | 0.70 |
| 1973 | 0.71 |
| 1974 | 0.71 |
| 1975 | 0.72 |
| 1976 | 0.73 |
| 1977 | 0.73 |
| 1978 | 0.74 |
| 1979 | 0.75 |
| 1980 | 0.75 |
| 1981 | 0.76 |
| 1982 | 0.77 |
| 1983 | 0.77 |
| 1984 | 0.78 |
| 1985 | 0.79 |
| 1986 | 0.79 |
| 1987 | 0.80 |
| 1988 | 0.80 |
| 1989 | 0.83 |
| 1990 | 0.82 |
| 1991 | 0.76 |
| 1992 | 0.74 |
| 1993 | 0.76 |
| 1994 | 0.75 |
| 1995 | 0.70 |
| 1996 | 0.68 |
| 1997 | 0.69 |
| 1998 | 0.75 |
| 1999 | 0.75 |
| 2000 | 0.80 |
| 2001 | 0.91 |
| 2002 | 1.02 |
| 2003 | 1.02 |
| 2004 | 1.01 |
| 2005 | 0.98 |
| 2006 | 0.95 |
| 2007 | 0.95 |
| 2008 | 0.95 |
| 2009 and all later years | 0.95 |

■ 85. Table HH–4 to Subpart HH is added to read as follows:

TABLE HH–4 TO SUBPART HH OF PART 98—LANDFILL METHANE OXIDATION FRACTIONS

| Under these conditions: | Use this landfill methane oxidation fraction: |
|---|---|
| **I. For all reporting years prior to the 2013 reporting year** | |
| C1: For all landfills regardless of cover type or methane flux | 0.10 |
| **II. For the 2013 reporting year and all subsequent years** | |
| C2: For landfills that have a geomembrane (synthetic) cover with less than 12 inches of cover soil for the majority of the landfill area containing waste | 0.0 |
| C3: For landfills that do not meet the conditions in C2 above, and for which you elect not to determine methane flux | 0.10 |
| C4: For landfills that do not meet the conditions in C2 above and that do not have a soil cover of at least 24 inches for a majority of the landfill area containing waste | 0.10 |
| C5: For landfills that have a soil cover of at least 24 inches for a majority of the landfill area containing waste and for which the methane flux rate is less than 10 grams per square meter per day ($g/m^2/d$) | 0.35 |
| C6: For landfills that have a soil cover of at least 24 inches for a majority of the landfill area containing waste and for which the methane flux rate is 10 to 70 $g/m^2/d$ | 0.25 |
| C7: For landfills that have a soil cover of at least 24 inches for a majority of the landfill area containing waste and for which the methane flux rate is greater than 70 $g/m^2/d$ | 0.10 |

[a] Methane flux rate (in grams per square meter per day; $g/m^2/d$) is the mass flow rate of methane per unit area at the bottom of the surface soil prior to any oxidation and is calculated as follows:

For Equation HH-5 of this subpart, or for Equation TT-6 of subpart TT of this part,

$$MF = K \times G_{CH4} / SArea$$

For Equation HH-6 of this subpart,

$$MF = K \times \left( G_{CH4} - \sum_{n-1}^{N} R_n \right) \Big/ SArea$$

For Equations HH-7 of this subpart,

$$MF = K \times \left( \frac{1}{CE} \sum_{n-1}^{N} \left[ \frac{R_n}{f_{Rec,n}} \right] \right) \Big/ SArea$$

For Equation HH-8 of this subpart,

$$MF = K \times \left( \frac{1}{CE} \left\{ \sum_{n-1}^{N} \left[ \frac{R_n}{f_{Rec,n}} \right] \right\} - \sum_{n-1}^{N} R_n \right) \Big/ SArea$$

Where:

MF = Methane flux rate from the landfill in the reporting year (grams per square meter per day, $g/m^2/d$).

K = unit conversion factor = $10^6/365$ (g/metric ton per days/year) or $10^6/366$ for a leap year.

SArea = The surface area of the landfill containing waste at the beginning of the reporting year (square meters, $m^2$).

$G_{CH4}$ = Modeled methane generation rate in reporting year from Equation HH–1 of this subpart or Equation TT–1 of subpart TT of this part, as applicable, except for application with Equation HH–6 of this subpart (metric tons $CH_4$). For application with Equation HH–6 of this subpart, the greater of the modeled methane generation rate in reporting year from Equation HH–1 of this subpart or Equation TT–1 of this part, as applicable, and the quantity of recovered $CH_4$ from Equation HH–4 of this subpart (metric tons $CH_4$).

CE = Collection efficiency estimated at landfill, taking into account system coverage, operation, and cover system materials from Table HH–3 of this subpart. If area by soil cover type information is not available, use default value of 0.75 (CE4 in table HH–3 of this subpart) for all areas under active influence of the collection system.

N = Number of landfill gas measurement locations (associated with a destruction device or gas sent off-site). If a single monitoring location is used to monitor volumetric flow and $CH_4$ concentration of the recovered gas sent to one or multiple destruction devices, then N=1.

$R_n$ = Quantity of recovered $CH_4$ from Equation HH–4 of this subpart for the nth measurement location (metric tons).

$f_{Rec,n}$ = Fraction of hours the recovery system associated with the nth measurement location was operating (annual operating hours/8760 hours per year or annual operating hours/8784 hours per year for a leap year).

## Subpart II—[AMENDED]

■ 86. Section 98.353 is amended by revising the parameters ''$f_{Dest_1}$'' and ''$f_{Dest_2}$'' of Equation II–6 in paragraph (d)(2) to read as follows:

### § 98.353 Calculating GHG emissions.

* * * * *

(d) * * *

(2) * * *

* * * * *

$f_{Dest_1}$ = Fraction of hours the primary destruction device was operating calculated as the annual hours when the destruction device was operating divided by the annual operating hours of the biogas recovery system. If the biogas is transported off-site for destruction, use $f_{Dest}$ = 1.

* * * * *

$f_{Dest_2}$ = Fraction of hours the back-up destruction device was operating calculated as the annual hours when the destruction device was operating divided by the annual operating hours of the biogas recovery system.

* * * * *

## Subpart LL—[AMENDED]

■ 87. Section 98.386 is amended by:

■ a. Removing and reserving paragraphs (a)(1) and (5).

■ b. Revising paragraph (a)(4), (a)(8), (a)(9)(v), (a)(11)(v), and (a)(12) introductory text.

■ c. Removing and reserving paragraph (a)(13).

■ d. Revising paragraphs (a)(14), (15) and (18).

■ e. Removing and reserving paragraph (b)(1).

■ f. Revising paragraphs (b)(4), (b)(5)(v), and (b)(6)(i).

■ g. Removing and reserving paragraph (c)(1).

■ h. Revising paragraphs (c)(4), (c)(5)(v), and (d)(2) and (3).

The revisions read as follows:

### § 98.386 Data reporting requirements.

* * * * *

(a) * * *

(4) Each standard method or other industry standard practice used to measure each quantity reported in paragraph (a)(2) of this section.

* * * * *

(8) Each standard method or other industry standard practice used to measure each quantity reported in paragraph (a)(6) of this section.

(9) * * *

(v) The calculated $CO_2$ emissions factor in metric tons $CO_2$ per barrel or per metric ton of product.

* * * * *

(11) * * *

(v) The calculated $CO_2$ emissions factor in metric tons $CO_2$ per barrel or metric ton of product.

* * * * *

(12) For every non-solid product reported in paragraph (a)(6) of this section for which Calculation Method 2 of subpart MM of this part was used to determine an emissions factor, report:

* * * * *

(14) For each specific type of biomass that enters the coal-to-liquid facility to be co-processed with fossil fuel-based feedstock to produce a product reported in paragraph (a)(6) of this section, report the annual quantity in metric tons or barrels.

(15) Each standard method or other industry standard practice used to measure each quantity reported in paragraph (a)(14) of this section.

* * * * *

(18) Annual $CO_2$ emissions in metric tons that would result from the complete combustion or oxidation of each type of biomass feedstock co-processed with fossil fuel-based feedstocks reported in paragraph (a)(14) of this section, calculated according to § 98.393(c).

* * * * *

(b) * * *

(4) Each standard method or other industry standard practice used to measure each quantity reported in paragraph (b)(2) of this section.

(5) * * *

(v) The calculated $CO_2$ emissions factor in metric tons per barrel or per metric ton of product.

(6) * * *

(i) The density test results in metric tons per barrel.

* * * * *

(c) * * *

(4) Each standard method or other industry standard practice used to measure each quantity reported in paragraph (c)(2) of this section.

(5) * * *

(v) The calculated $CO_2$ emissions factor in metric tons $CO_2$ per barrel or per metric ton of product.

* * * * *

(d) * * *

(2) For a product that enters the facility to be further refined or otherwise used on site that is a blended feedstock, producers must meet the reporting requirements of paragraph (a)(2) of this section by reflecting the individual components of the blended feedstock.

(3) For a product that is produced, imported, or exported that is a blended product, producers, importers, and exporters must meet the reporting requirements of paragraphs (a)(6), (b)(2), and (c)(2) of this section, as applicable, by reflecting the individual components of the blended product.

## Subpart MM—[AMENDED]

■ 88. Section 98.393 is amended by:

■ a. Revising the parameter ''$Product_i$'' of Equation MM–1 in paragraph (a)(1).

■ b. Revising the parameter ''$Product_i$'' of Equation MM–1 in paragraph (a)(2).

■ c. Revising paragraphs (h)(1) introductory text and (h)(2) introductory text.

The revisions read as follows:

### § 98.393 Calculating GHG emissions.

(a) * * *

(1) * * *

* * * * *

$Product_i$ = Annual volume of product ''i'' produced, imported, or exported by the reporting party (barrels). For refiners, this volume only includes products ex refinery gate, and excludes products that entered the refinery but are not reported under § 98.396(a)(2). For natural gas liquids, volumes shall reflect the individual components of the product as listed in Table MM–1 to subpart MM.

* * * * *

(2) * * *

* * * * *

$Product_i$ = Annual mass of product ''i'' produced, imported, or exported by the reporting party (metric tons). For refiners, this mass only includes products ex refinery gate, and excludes products that entered the refinery but are not reported under § 98.396(a)(2).

* * * * *

(h) * * *

(1) A reporter using Calculation Method 1 to determine the emission factor of a petroleum product shall calculate the $CO_2$ emissions associated with that product using Equation MM–8 of this section in place of Equation MM–1 of this section.

* * * * *

(2) A refinery using Calculation Method 1 of this subpart to determine the emission factor of a non-crude petroleum feedstock shall calculate the $CO_2$ emissions associated with that feedstock using Equation MM–9 of this section in place of Equation MM–2 of this section.

* * * * *

■ 89. Section 98.394 is amended by:

■ a. Revising paragraphs (a)(1) introductory text and (a)(3).

■ b. Adding paragraph (b)(3).

■ c. Revising paragraph (c) introductory text.

■ d. Removing paragraph (d).

The revisions and addition read as follows:

### § 98.394 Monitoring and QA/QC requirements.

(a) * * *

(1) The quantity of petroleum products, natural gas liquids, and biomass, shall be determined as follows:

* * * * *

(3) The annual quantity of crude oil received shall be determined according to one of the following methods. You may use an appropriate standard method published by a consensus-based standards organization or you may use an industry standard practice.

(b) * * *

(3) For units and processes that operate continuously with infrequent outages, it may not be possible to complete the calibration of a flow meter or other measurement device without disrupting normal process operation. In such cases, the owner or operator may postpone the calibration until the next scheduled maintenance outage. The best available information from company records may be used in the interim. Such postponements shall be documented in the monitoring plan that is required under § 98.3(g)(5).

(c) Procedures for Calculation Method 2 of this subpart.

* * * * *

■ 90. Section 98.395 is amended by revising paragraphs (a) introductory text and (b) and removing paragraph (c).

The revisions read as follows:

### § 98.395 Procedures for estimating missing data.

(a) *Determination of quantity.* Whenever the quality assurance procedures in § 98.394(a) cannot be followed to measure the quantity of one or more petroleum products, natural gas liquids, types of biomass, feedstocks, or crude oil during any period (e.g., if a meter malfunctions), the following missing data procedures shall be used:

* * * * *

(b) *Determination of emission factor.* Whenever any of the procedures in § 98.394(c) cannot be followed to develop an emission factor for any reason, Calculation Method 1 of this subpart must be used in place of Calculation Method 2 of this subpart for the entire reporting year.

■ 91. Section 98.396 is amended by:

■ a. Removing and reserving paragraph (a)(1).

■ b. Removing and reserving paragraphs (a)(4), (5), and (8).

■ c. Revising paragraphs (a)(9) introductory text, (a)(9)(iii), (a)(9)(v),

(a)(10) introductory text, (a)(11) introductory text, and (a)(11)(iii).

■ d. Removing and reserving paragraphs (a)(13) and (15).

■ e. Revising paragraph (a)(18).

■ f. Revising paragraphs (a)(20) through (22).

■ g. Removing paragraph (a)(23).

■ h. Removing and reserving paragraph (b)(1).

■ i. Revising paragraph (b)(2).

■ j. Removing and reserving paragraph (b)(4).

■ k. Revising paragraphs (b)(5) introductory text and (b)(6) introductory text.

■ l. Removing and reserving paragraphs (c)(1) and (4).

■ m. Revising paragraphs (c)(5) introductory text, (c)(6) introductory text, and (d)(2) and (3).

■ The revisions read as follows:

**§ 98.396 Data reporting requirements.**

* * * * *

(a) * * *

(9) For every feedstock reported in paragraph (a)(2) of this section for which Calculation Method 2 of this subpart was used to determine an emissions factor, report:

* * * * *

(iii) The carbon share test results in percent mass.

* * * * *

(v) The calculated $CO_2$ emissions factor in metric tons $CO_2$ per barrel or per metric ton of product.

(10) For every non-solid feedstock reported in paragraph (a)(2) of this section for which Calculation Method 2 of this subpart was used to determine an emissions factor, report:

* * * * *

(11) For every petroleum product and natural gas liquid reported in paragraph (a)(6) of this section for which Calculation Method 2 of this subpart was used to determine an emissions factor, report:

* * * * *

(iii) The carbon share test results in percent mass.

* * * * *

(18) The $CO_2$ emissions in metric tons that would result from the complete combustion or oxidation of each type of biomass feedstock co-processed with petroleum feedstocks reported in paragraph (a)(14) of this section, calculated according to § 98.393(c).

* * * * *

(20) For all crude oil that enters the refinery, report the annual quantity in barrels.

(21) The quantity of bulk NGLs in metric tons or barrels received for processing during the reporting year. Report only quantities of bulk NGLs not reported in (a)(2) of this section.

(22) Volume of crude oil in barrels that you injected into a crude oil supply or reservoir.

* * * * *

(b) * * *

* * * * *

(2) For each petroleum product and natural gas liquid listed in Table MM–1 of this subpart, report the annual quantity in metric tons or barrels. For natural gas liquids, quantity shall reflect the individual components of the product.

* * * * *

(5) For each product reported in paragraph (b)(2) of this section for which Calculation Method 2 of this subpart used was used to determine an emissions factor, report:

* * * * *

(6) For each non-solid product reported in paragraph (b)(2) of this section for which Calculation Method 2 of this subpart was used to determine an emissions factor, report:

* * * * *

(c) * * *

(5) For each product reported in paragraph (c)(2) of this section for which Calculation Method 2 of this subpart was used to determine an emissions factor, report:

* * * * *

(6) For each non-solid product reported in paragraph (c)(2) of this section for which Calculation Method 2 of this subpart used was used to determine an emissions factor, report:

* * * * *

(d) * * *

(2) For a product that enters the refinery to be further refined or otherwise used on site that is a blended non-crude feedstock, refiners must meet the reporting requirements of paragraph (a)(2) of this section by reflecting the individual components of the blended non-crude feedstock.

(3) For a product that is produced, imported, or exported that is a blended product, refiners, importers, and exporters must meet the reporting requirements of paragraphs (a)(6), (b)(2), and (c)(2) of this section, as applicable, by reflecting the individual components of the blended product.

■ 92. Section 98.397 is amended by revising paragraphs (b) and (d) to read as follows:

**§ 98.397 Records that must be retained.**

* * * * *

(b) Reporters shall maintain records to support quantities that are reported under this subpart, including records documenting any estimations of missing data and the number of calendar days in the reporting year for which substitute data procedures were followed. For all reported quantities of petroleum products, natural gas liquids, and biomass, reporters shall maintain metering, gauging, and other records normally maintained in the course of business to document product and feedstock flows including the date of initial calibration and the frequency of recalibration for the measurement equipment used.

* * * * *

(d) Reporters shall maintain laboratory reports, calculations and worksheets used in the measurement of density and carbon share for any petroleum product or natural gas liquid for which $CO_2$ emissions were calculated using Calculation Method 2.

* * * * *

■ 93. Section 98.398 is amended by:

■ a. Adding the definitions for ''Bulk NGLs'' and ''Natural Gas Liquids (NGLs)'' in alphabetical order.

■ b. Removing the definition of ''Batch''.

The revisions read as follows:

**§ 98.398 Definitions.**

* * * * *

*Bulk NGLs* for purposes of reporting under this subpart means mixtures of NGLs that are sold or delivered as undifferentiated product.

*Natural Gas Liquids (NGLs)* for the purposes of reporting under this subpart means hydrocarbons that are separated from natural gas as liquids through the process of absorption, condensation, adsorption, or other methods, and are sold or delivered as differentiated product. Generally, such liquids consist of ethane, propane, butanes, or pentanes plus.

■ 94. Table MM–1 to Subpart MM is amended by:

■ a. Revising the entries for Ethane, Ethylene, Propane, Propylene, Butane, Butylene, Isobutane, and Isobutylene.

■ b. Adding footnotes 3 and 4.

TABLE MM–1 TO SUBPART MM OF PART 98—DEFAULT FACTORS FOR PETROLEUM PRODUCTS AND NATURAL GAS LIQUIDS [1] [2]

| Products | Column A: density (metric tons/bbl) | Column B: carbon share (% of mass) | Column C: emission factor (metric tons $CO_2$/bbl) |
|---|---|---|---|
| * * * * * | * | * | |
| **Other Petroleum Products and Natural Gas Liquids** | | | |
| * * * * * | * | * | |
| Ethane [3] | 0.0579 | 79.89 | 0.170 |
| Ethylene [4] | 0.0492 | 85.63 | 0.154 |
| Propane [3] | 0.0806 | 81.71 | 0.241 |
| Propylene [3] | 0.0827 | 85.63 | 0.260 |
| Butane [3] | 0.0928 | 82.66 | 0.281 |
| Butylene [3] | 0.0972 | 85.63 | 0.305 |
| Isobutane [3] | 0.0892 | 82.66 | 0.270 |
| Isobutylene [3] | 0.0949 | 85.63 | 0.298 |
| * * * * * | * | * | |

[3] The density and emission factors for components of LPG determined at 60 degrees Fahrenheit and saturation pressure (LPGs other than ethylene).
[4] The density and emission factor for ethylene determined at 41 degrees Fahrenheit and saturation pressure.

## Subpart NN—[AMENDED]

■ 95. Section 98.400 is amended by revising paragraphs (a) and (b) to read as follows:

### § 98.400 Definition of the source category.

* * * * *

(a) Natural gas liquids fractionators are installations that fractionate natural gas liquids (NGLs) into their constituent liquid products or mixtures of products (ethane, propane, normal butane, isobutane or pentanes plus) for supply to downstream facilities.

(b) Local Distribution Companies (LDCs) are companies that own or operate distribution pipelines, not interstate pipelines or intrastate pipelines, that physically deliver natural gas to end users and that are within a single state that are regulated as separate operating companies by State public utility commissions or that operate as independent municipally-owned distribution systems. LDCs do not include pipelines (both interstate and intrastate) delivering natural gas directly to major industrial users and farm taps upstream of the local distribution company inlet.

* * * * *

■ 96. Section 98.403 is amended by:

■ a. Revising the parameter ''$Fuel_h$'' to Equation NN–2 in paragraph (a)(2).

■ b. Revising paragraphs (b)(1) introductory text and (b)(2)(i).

■ c. Revising parameters ''$CO_{2k}$'' and ''Fuel'' to Equation NN–4 in paragraph (b)(2)(ii).

■ d. Revising paragraph (b)(3).

■ e. Revising paragraph (b)(4).

■ f. Revising paragraph (c)(2) introductory text.

■ g. Revising parameter ''$CO_2$'' of Equation NN–8 of paragraph (c)(2).

The revisions read as follows:

### § 98.403 Calculating GHG emissions.

(a) * * *

(2) * * *

* * * * *

$Fuel_h$ = Total annual volume of product ''h'' supplied (volume per year, in Mscf for natural gas and bbl for NGLs).

* * * * *

(b) * * *

(1) For natural gas that is received for redelivery to downstream gas transmission pipelines and other local distribution companies, use Equation NN–3 of this section and the default values for the $CO_2$ emission factors found in Table NN–2 of this subpart. Alternatively, reporter-specific $CO_2$ emission factors may be used, provided they are developed using methods outlined in § 98.404.

* * * * *

(2)(i) For natural gas delivered to large end-users, use Equation NN–4 of this section and the default values for the $CO_2$ emission factors found in Table NN–2 of this subpart. A large end-user means any end-user facility receiving greater than or equal to 460,000 Mscf of natural gas per year. If the LDC does not know the total quantity of gas delivered to the end-user facility based on readily available information in the LDCs possession, then large end-user means any single meter at an end-user facility to which the LDC delivers equal to or greater than 460,000 Mscf per year.

(ii) * * *

* * * * *

$CO_{2k}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas delivered to each large end-user k, as defined in paragraph (b)(2)(i) of this section (metric tons).

Fuel = Total annual volume of natural gas supplied to each large end-user k, as defined in paragraph (b)(2)(i) of this section (Mscf per year).

* * * * *

(3) For the net change in natural gas stored on system by the LDC during the reporting year, use Equation NN–5a of this section. For natural gas that is received by means other than through the city gate, and is not otherwise accounted for by Equation NN–1 or NN–2 of this section, use Equation NN–5b of this section.

(i) For natural gas received by the LDC that is injected into on-system storage, and/or liquefied and stored, and for gas removed from storage and used for deliveries, use Equation NN–5a of this section and the default value for the $CO_2$ emission factors found in Table NN–2 of this subpart. Alternatively, a reporter-specific $CO_2$ emission factor may be

used, provided it is developed using methods outlined in § 98.404.

$$CO_{2l} = [Fuel_1 - Fuel_2] * EF \quad \text{(Eq. NN-5a)}$$

Where:

$CO_{2l}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of the net change in natural gas stored on system by the LDC within the reporting year (metric tons).

$Fuel_1$ = Total annual volume of natural gas added to storage on-system or liquefied and stored in the reporting year (Mscf per year).

$Fuel_2$ = Total annual volume of natural gas that is removed from storage or vaporized and removed from storage and used for deliveries to customers or other LDCs by the LDC within the reporting year (Mscf per year).

EF = Annual average $CO_2$ emission factor for natural gas placed into/removed from storage (MT $CO_2$/Mscf).

(ii) For natural gas received by the LDC that bypassed the city gate, use Equation NN–5b of this section. This includes natural gas received directly by LDC systems from producers or natural gas processing plants from local production, received as a liquid and vaporized for delivery, or received from any other source that bypassed the city gate. Use the default value for the $CO_2$ emission factors found in Table NN–2 of this subpart. Alternatively, a reporter-specific $CO_2$ emission factor may be used, provided it is developed using methods outlined in § 98.404.

$$CO_{2n} = Fuel_z * EF_z \quad \text{(Eq. NN-5b)}$$

Where:

$CO_{2n}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas received that bypassed the city gate and is not otherwise accounted for by Equation NN–1 or NN–2 of this section (metric tons).

$Fuel_z$ = Total annual volume of natural gas received that was not otherwise accounted for by Equation NN–1 or NN–2 of this section (natural gas from producers and natural gas processing plants from local production, or natural gas that was received as a liquid, vaporized and delivered, and any other source that bypassed the city gate). (Mscf per year)

$EF_z$ = Fuel-specific $CO_2$ emission factor (MT $CO_2$/Mscf)

(4) Calculate the total $CO_2$ emissions that would result from the complete combustion or oxidation of the annual supply of natural gas to end-users that receive a supply less than 460,000 Mscf per year using Equation NN–6 of this section.

$$CO_2 = CO_{2i} + CO_{2n} - CO_{2j} - \sum CO_{2k} - CO_{2l} \quad \text{(Eq. NN-6)}$$

Where:

$CO_2$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas delivered to LDC end-users not covered in paragraph (b)(2) of this section (metric tons).

$CO_{2i}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas received at the city gate as calculated in paragraph (a)(1) or (2) of this section (metric tons).

$CO_{2j}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas delivered to transmission pipelines or other LDCs as calculated in paragraph (b)(1) of this section (metric tons).

$CO_{2k}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas delivered to each large end-user as calculated in paragraph (b)(2) of this section (metric tons).

$CO_{2l}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of the net change in natural gas stored by the LDC within the reported year as calculated in paragraph (b)(3)(i) of this section (metric tons).

$CO_{2n}$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of natural gas that was received by the LDC directly from sources bypassing the city gate, and is not otherwise accounted for in Equation NN–1 or NN–2 of this section, as calculated in paragraph (b)(3)(ii) of this section (metric tons).

(c) * * *

(2) Calculate the total $CO_2$ equivalent emissions that would result from the combustion or oxidation of fractionated NGLs supplied less the quantity received from other fractionators using Equation NN–8 of this section.

* * * * *

$CO_2$ = Annual $CO_2$ mass emissions that would result from the combustion or oxidation of fractionated NGLs delivered to customers or on behalf of customers less the quantity received from other fractionators (metric tons).

* * * * *

■ 97. Section 98.404 is amended by:

■ a. Revising paragraphs (a)(5) introductory text, (a)(7), (a)(8) introductory text, and (a)(8)(ii).

■ b. Adding paragraph (a)(8)(iii).

■ c. Revising paragraphs (a)(9), (c)(2), and (d)(1) and (2).

■ d. Adding paragraph (d)(3).

The revisions and additions read as follows:

**§ 98.404 Monitoring and QA/QC requirements.**

(a) * * *

(5) For an LDC using Equation NN–1 or NN–2 of this subpart, the point(s) of measurement for the natural gas volume received shall be the LDC city gate meter(s).

* * * * *

(7) An LDC using Equation NN–4 of this subpart shall measure natural gas at the large end-user's meter(s). Where a large end-user is known to have more than one meter located at their facility, based on readily available information in the LDCs possession, the reporter shall measure the natural gas at each meter and sum the annual volume delivered to all meters located at the end-user's facility to determine the total volume delivered to the large end-user. Otherwise, the reporter shall consider the total annual volume delivered through each single meter at a single particular location to be the volume delivered to an individual large end-user.

(8) An LDC using Equation NN–5a and/or NN–5b of this subpart shall measure natural gas as follows:

* * * * *

(ii) $Fuel_2$ shall be measured at the meters used for measuring on-system storage withdrawals and/or LNG vaporization injection.

(iii) $Fuel_z$ shall be measured using established business practices.

(9) An LDC shall measure all natural gas under the following standard industry temperature and pressure conditions: Cubic foot of gas at a temperature of 60 degrees Fahrenheit and at an absolute pressure of one atmosphere.

* * * * *

(c) * * *

(2) When a reporter used the default EF provided in this section to calculate Equation NN–2, NN–3, NN–4, NN–5a, NN–5b, or NN–7 of this subpart, the appropriate value shall be taken from Table NN–2 of this subpart.

* * * * *

(d) * * *

(1) Equipment used to measure quantities in Equations NN–1, NN–2, NN–5a and NN–5b of this subpart shall be calibrated prior to its first use for reporting under this subpart, using a suitable standard method published by a consensus based standards organization or according to the equipment manufacturer's directions.

(2) Equipment used to measure quantities in Equations NN–1, NN–2, NN–5a, and NN–5b of this subpart shall be recalibrated at the frequency specified by the standard method used or by the manufacturer's directions.

(3) Equipment used to measure quantities in Equations NN–3 and NN–4 of this subpart shall be recalibrated at the frequency commonly used within the industry.

**§ 98.405 [Amended]**

■ 98. Section 98.405 is amended by removing and reserving paragraph (c)(3).

■ 99. Section 98.406 is amended by:

■ a. Revising paragraph (a)(4) and (7).

■ b. Revising paragraphs (b)(2) and (3).

■ c. Removing and reserving paragraph (b)(4).

■ d. Revising paragraphs (b)(5), (b)(7), (b)(9), and (b)(12) introductory text.

The revisions read as follows:

**§ 98.406 Data reporting requirements.**

(a) * * *

(4) Annual quantities (in barrels) of y-grade, o-grade, and other bulk NGLs:

(i) Received.

(ii) Supplied to downstream users that are not fractionated by the reporter.

* * * * *

(7) Annual $CO_2$ mass emissions (metric tons) that would result from the combustion or oxidation of fractionated NGLs supplied less the quantity received from other fractionators, calculated in accordance with § 98.403(c)(2). If the calculated value is negative, the reporter shall report the value as zero.

* * * * *

(b) * * *

(2) Annual volume in Mscf of natural gas placed into storage or liquefied and stored ($Fuel_1$ in Equation NN–5a).

(3) Annual volume in Mscf of natural gas withdrawn from on-system storage and annual volume in Mscf of vaporized liquefied natural gas (LNG) withdrawn from storage for delivery on the distribution system ($Fuel_2$ in Equation NN–5a).

(5) Annual volume in Mscf of natural gas that bypassed the city gate(s) and was supplied through the LDC distribution system. This includes natural gas from producers and natural gas processing plants from local production, or natural gas that was vaporized upon receipt and delivered, and any other source that bypassed the city gate ($Fuel_z$ in Equation NN–5b).

* * * * *

(7) Annual volume in Mscf of natural gas delivered by the LDC to each large end-user as defined in § 98.403(b)(2)(i) of this section.

* * * * *

(9) Annual $CO_2$ emissions (metric tons) that would result from the complete combustion or oxidation of the annual supply of natural gas to end-users registering less than 460,000 Mscf, calculated in accordance with § 98.403(b)(4). If the calculated value is negative, the reporter shall report the value as zero.

* * * * *

(12) The customer name, address, and meter number of each large end-user reported in paragraph (b)(7) of this section. Additionally, report whether the quantity of natural gas reported in paragraph (b)(7) of this section is the total quantity delivered to a large end-user's facility, or the quantity delivered to a specific meter located at the facility.

* * * * *

■ 100. Section 98.407 is amended by revising the introductory text to read as follows:

**§ 98.407 Records that must be retained.**

In addition to the information required by § 98.3(g), the reporter shall retain the following records:

* * * * *

■ 101. Table NN–1 to subpart NN is revised to read as follows:

TABLE NN–1 TO SUBPART NN OF PART 98—DEFAULT FACTORS FOR CALCULATION METHODOLOGY 1 OF THIS SUBPART

| Fuel | Default higher heating value [1] | Default $CO_2$ emission factor (kg $CO_2$/MMBtu) |
|---|---|---|
| Natural Gas | 1.026 MMBtu/Mscf. | 53.06 |
| Propane | 3.84 MMBtu/bbl. | 62.87 |
| Normal butane. | 4.34 MMBtu/bbl. | 64.77 |
| Ethane | 2.85 MMBtu/bbl. | 59.60 |
| Isobutane | 4.16 MMBtu/bbl. | 64.94 |
| Pentanes plus. | 4.62 MMBtu/bbl. | 70.02 |

[1] Conditions for higher heating values presented in MMBtu/bbl are 60°F and saturation pressure.

■ 102. Table NN–1 to subpart NN is revised to read as follows:

TABLE NN–2 TO SUBPART NN OF PART 98—DEFAULT VALUES FOR CALCULATION METHODOLOGY 2 OF THIS SUBPART

| Fuel | Unit | Default $CO_2$ emission value (MT $CO_2$/Unit) [1] |
|---|---|---|
| Natural Gas | Mscf | 0.0544 |
| Propane | Barrel | 0.241 |
| Normal butane. | Barrel | 0.281 |
| Ethane | Barrel | 0.170 |
| Isobutane | Barrel | 0.270 |
| Pentanes plus. | Barrel | 0.324 |

[1] Conditions for emission value presented in MT $CO_2$/bbl are 60°F and saturation pressure.

## Subpart PP—[AMENDED]

■ 103. Section 98.423 is amended by revising paragraph (a)(3)(i) introductory text to read as follows:

**§ 98.423 Calculating $CO_2$ supply.**

(a) * * *

(3) * * *

(i) For facilities with production process units or production wells that capture or extract a $CO_2$ stream and either measure it after segregation or do not segregate the flow, calculate the total $CO_2$ supplied in accordance with Equation PP–3a in paragraph (a)(3).

* * * * *

■ 104. Section 98.426 is amended by revising paragraphs (b)(4)(i) and (ii) and (f)(10) and (11) to read as follows:

**§ 98.426 Data reporting requirements.**

* * * * *

(b) * * *

(4) * * *

(i) Quarterly density of the $CO_2$ stream in metric tons per standard cubic meter if you report the concentration of the $CO_2$ stream in paragraph (b)(3) of this section in weight percent.

(ii) Quarterly density of $CO_2$ in metric tons per standard cubic meter if you report the concentration of the $CO_2$ stream in paragraph (b)(3) of this section in volume percent.

* * * * *

(f) * * *

(10) Injection of carbon dioxide for enhanced oil and natural gas recovery that is covered by subpart UU of this part.

(11) Geologic sequestration of carbon dioxide that is covered by subpart RR of this part.

* * * * *

## Subpart QQ—[AMENDED]

■ 105. Section 98.433 is amended by revising the parameter ''$S_t$'' of Equation QQ–1 in paragraph (a) and Equation QQ–2 in paragraph (b) to read as follows:

**§ 98.433 Calculating GHG contained in pre-charged equipment or closed-cell foams.**

(a) * * *

* * * * *

$S_t$ = Mass of fluorinated GHG per unit of equipment type t or foam type t (charge per piece of equipment, kg) or density of fluorinated GHG in foam (charge per cubic foot of foam, kg per cubic foot).

* * * * *

(b) * * *

* * * * *

$S_t$ = Mass in $CO_2e$ of the fluorinated GHGs per unit of equipment type t or foam type t (charge per piece of equipment, kg) or density of fluorinated GHG in foam ($CO_2e$ per cubic foot of foam, kg $CO_2e$ per cubic foot).

* * * * *

■ 106. Section 98.434 is amended by revising paragraph (b) to read as follows:

**§ 98.434 Monitoring and QA/QC requirements.**

* * * * *

(b) The inputs to the annual submission must be reviewed against the import or export transaction records to ensure that the information submitted to EPA is being accurately transcribed as the correct chemical or blend in the correct pre-charged equipment or closed-cell foam in the correct quantities and units.

■ 107. Section 98.436 is amended by:

■ a. Revising paragraphs (a)(3), (a)(4), (a)(6)(ii), (a)(6)(iii), (b)(3), (b)(4), and (b)(6)(ii) and (iii).

■ b. Removing and reserving paragraphs (a)(5), (a)(6)(iv), (b)(5), and (b)(6)(iv).

The revisions read as follows:

**§ 98.436 Data reporting requirements.**

(a) * * *

(3) For closed-cell foams that are imported inside of equipment, the identity of the fluorinated GHG contained in the foam, the mass of the fluorinated GHG contained in the foam in each piece of equipment, and the number of pieces of equipment imported with each unique combination of mass and identity of fluorinated GHG within the closed-cell foams.

(4) For closed cell-foams that are not imported inside of equipment, the identity of the fluorinated GHG in the foam, the density of the fluorinated GHG in the foam (kg fluorinated GHG/cubic foot), and the volume of foam imported (cubic feet) for each type of closed-cell foam with a unique combination of fluorinated GHG density and identity.

* * * * *

(6) * * *

(ii) For closed-cell foams that are imported inside of equipment, the mass of the fluorinated GHGs in $CO_2e$ contained in the foam in each piece of equipment and the number of pieces of equipment imported for each equipment type.

(iii) For closed-cell foams that are not imported inside of equipment, the density in $CO_2e$ of the fluorinated GHGs in the foam (kg $CO_2e$/cubic foot) and the volume of foam imported (cubic feet) for each type of closed-cell foam.

* * * * *

(b) * * *

(3) For closed-cell foams that are exported inside of equipment, the identity of the fluorinated GHG contained in the foam in each piece of equipment, the mass of the fluorinated GHG contained in the foam in each piece of equipment, and the number of pieces of equipment exported with each unique combination of mass and identity of fluorinated GHG within the closed-cell foams.

(4) For closed-cell foams that are not exported inside of equipment, the identity of the fluorinated GHG in the foam, the density of the fluorinated GHG in the foam (kg fluorinated GHG/cubic foot), and the volume of foam exported (cubic feet) for each type of closed-cell foam with a unique combination of fluorinated GHG density and identity.

* * * * *

(6) * * *

(ii) For closed-cell foams that are exported inside of equipment, the mass of the fluorinated GHGs in $CO_2e$ contained in the foam in each piece of equipment and the number of pieces of equipment imported for each equipment type.

(iii) For closed-cell foams that are not exported inside of equipment, the density in $CO_2e$ of the fluorinated GHGs in the foam (kg $CO_2$ e/cubic foot) and the volume of foam imported (cubic feet) for each type of closed-cell foam.

* * * * *

■ 108. Section 98.438 is amended by revising the definitions for ''Closed-cell foam'' and ''Pre-charged electrical equipment component'' to read as follows:

**§ 98.438 Definitions.**

* * * * *

*Closed-cell foam* means any foam product, excluding packaging foam, that is constructed with a closed-cell structure and a blowing agent containing a fluorinated GHG. Closed-cell foams include but are not limited to polyurethane (PU) foam contained in equipment, PU continuous and discontinuous panel foam, PU one component foam, PU spray foam, extruded polystyrene (XPS) boardstock foam, and XPS sheet foam. Packaging foam means foam used exclusively during shipment or storage to temporarily enclose items.

* * * * *

*Pre-charged electrical equipment component* means any portion of electrical equipment that is charged with a fluorinated greenhouse gas prior to sale or distribution or offer for sale or distribution in interstate commerce.

## Subpart RR—[AMENDED]

■ 109. Section 98.443 is amended by:

■ a. Revising the parameter ''$S_{r,p}$'' to Equation RR–2 in paragraph (b)(2).

■ b. Revising the last sentence of paragraph (d)(3) introductory text.

■ c. Revising the parameter ''$CO_{2FI}$'' of Equation RR–12 in paragraph (f)(2).

The revisions read as follows:

**§ 98.443 Calculating $CO_2$ geologic sequestration.**

* * * * *

(b) * * *

(2) * * *

* * * * *

$S_{r,p}$ = Quarterly volume of contents in containers r redelivered to another facility without being injected into your well in quarter p (standard cubic meters).

* * * * *

(d) * * *

(3) * * * The considerations you intend to use to calculate $CO_2$ from produced fluids for the mass balance equation must be described in your approved MRV plan in accordance with § 98.448(a)(5).

* * * * *

(f) * * *

(2) * * *

* * * * *

$CO_{2FI}$ = Total annual $CO_2$ mass emitted (metric tons) from equipment leaks and vented emissions of $CO_2$ from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead, for which a calculation procedure is provided in subpart W of this part.

■ 110. Section 98.446 is amended by revising paragraph (b)(5) to read as follows:

**§ 98.446 Data reporting requirements.**

* * * * *

(b) * * *

(5) The standard or method used to calculate each value in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

* * * * *

## Subpart SS—[AMENDED]

■ 111. Section 98.453 is amended by:

■ a. Revising paragraph (d).

■ b. Revising paragraph (h).

■ c. Revising the parameter ''MF'' of Equation SS–6 in paragraph (i).

The revisions read as follows:

**§ 98.453 Calculating GHG emissions.**

* * * * *

(d) Estimate the mass of $SF_6$ or PFCs disbursed to customers in new equipment or cylinders over the period p by monitoring the mass flow of the $SF_6$ or PFCs into the new equipment or cylinders using a flowmeter, or by weighing containers before and after gas from containers is used to fill equipment or cylinders, or by using the nameplate capacity of the equipment.

* * * * *

(h) If the mass of $SF_6$ or the PFC disbursed to customers in new equipment or cylinders over the period p is determined by using the nameplate capacity, or by using the nameplate capacity of the equipment and calculating the partial shipping charge, use the methods in either paragraph (h)(1) or (h)(2) of this section.

(1) Determine the equipment's actual nameplate capacity, by measuring the nameplate capacities of a representative sample of each make and model and calculating the mean value for each make and model as specified at § 98.454(f).

(2) If equipment is shipped with a partial charge, calculate the partial shipping charge by multiplying the nameplate capacity of the equipment by the ratio of the densities of the partial charge to the full charge.

(i) * * *

* * * * *

MF = The total annual mass of the SF6 or PFCs, in pounds, used to fill equipment during equipment installation at electric transmission or distribution facilities.

* * * * *

■ 112. Section 98.456 is amended by revising paragraphs (m), (o), and (p) to read as follows:

**§ 98.456 Data reporting requirements.**

* * * * *

(m) The values for $EF_{ci}$ of Equation SS–5 of this subpart for each hose and valve combination and the associated valve fitting sizes and hose diameters.

* * * * *

(o) If the mass of $SF_6$ or the PFC disbursed to customers in new equipment over the period p is determined according to the methods required in § 98.453(h), report the mean value of nameplate capacity in pounds for each make, model, and group of conditions.

(p) If the mass of $SF_6$ or the PFC disbursed to customers in new equipment over the period p is determined according to the methods required in § 98.453(h), report the number of samples and the upper and lower bounds on the 95 percent confidence interval for each make, model, and group of conditions.

* * * * *

## Subpart TT—[AMENDED]

■ 113. Section 98.460 is amended by revising paragraph (c)(2)(xiii) to read as follows:

**§ 98.460 Definition of the source category.**

* * * * *

(c) * * *

(2) * * *

(xiii) Other waste material that has a DOC value of 0.3 weight percent (on a wet basis) or less. DOC value must be determined using a 60-day anaerobic biodegradation test procedure identified in § 98.464(b)(4)(i).

* * * * *

■ 114. Section 98.463 is amended by:

■ a. Revising the parameter ''$DOC_F$'' of Equation TT–1 in paragraph (a)(1).

■ b. Removing the parameter ''$F_x$'' of Equation TT–1 and adding in its place the parameter ''F''.

■ c. Revising Equation TT–4b in paragraph (a)(2)(ii)(C).

■ d. Revising the parameter ''OX'' of Equation TT–6 in paragraph (b)(1).

The revisions read as follows:

**§ 98.463 Calculating GHG emissions.**

(a) * * *

(1) * * *

* * * * *

$DOC_F$ = Fraction of DOC dissimilated (fraction); use the default value of 0.5. If measured values of DOC are available using the 60-day anaerobic biodegradation test procedure identified in § 98.464(b)(4)(i), use a default value of 1.0.

* * * * *

F = Fraction by volume of $CH_4$ in landfill gas (fraction, dry basis, corrected to 0% oxygen). If you have a gas collection system, use the annual average $CH_4$ concentration from measurement data for the current reporting year; otherwise, use the default value of 0.5.

* * * * *

(2) * * *

(ii) * * *

(C) * * *

* * * * *

$$W_x = \frac{WIP - \sum_{n=1}^{NYrData} W_{meas,n}}{(YrLast - YrOpen + 1 - NYrData)} \qquad \text{(Eq. TT-4b)}$$

* * * * *

(b) * * *

(1) * * *

* * * * *

OX = Oxidation fraction from Table HH–4 of subpart HH of this part.

* * * * *

■ 115. Section 98.464 is amended by:

■ a. Revising paragraph (b) introductory text.

■ b. Revising Equation TT–7 in paragraph (b)(4)(i)(E).

■ c. Removing the parameters ''$DOC_F$'', ''$MCD_{control}$'', and ''$MC_{control}$'' of Equation TT–7 in paragraph (b)(4)(i)(E).

■ d. Revising paragraph (c).

The revisions read as follows:

**§ 98.464 Monitoring and QA/QC requirements.**

* * * * *

(b) For each waste stream placed in the landfill during the reporting year for which you choose to determine volatile solids concentration and/or a waste stream-specific $DOC_X$, you must collect and test a representative sample of that waste stream using the methods specified in paragraphs (b)(1) through (b)(4) of this section, as applicable.

* * * * *

(4) * * *

(i) * * *

(E) * * *

$$DOC_x = \frac{MCD_{sample,x}}{M_{sample,x}} \qquad \text{(Eq. TT-7)}$$

Where:

$DOC_X$ = Degradable organic content of the waste stream in Year X (weight fraction, wet basis)

$MCD_{sample,x}$ = Mass of carbon degraded in the waste stream sample in Year X as determined in paragraph (b)(4)(i)(C) of this section [milligrams (mg)].

$M_{sample,x}$ = Mass of waste stream sample used in the anaerobic degradation test in Year X (mg, wet basis).

* * * * *

(c) For each waste stream that was historically managed in the landfill for which you choose to determine volatile solids concentration and/or a waste stream-specific $DOC_X$, you must determine volatile solids concentration or $DOC_X$ of the waste stream as initially placed in the landfill using the methods specified in paragraph (c)(1) or (2) of this section, as applicable.

(1) If you can identify a similar waste stream to the waste stream that was historically managed in the landfill, you must determine the volatile solids concentration or $DOC_X$ of the similar waste stream using the applicable procedures in paragraphs (b)(1) through (4) of this section.

(2) If you cannot identify a similar waste stream to the waste stream that was historically managed in the landfill, you may determine the volatile solids concentration or $DOC_X$ of the historically managed waste stream using process knowledge. You must document the basis for the volatile solids concentration or $DOC_X$ value as determined through process knowledge.

* * * * *

■ 116. Section 98.466 is amended by:

■ a. Revising paragraph (b)(1).

■ b. Adding paragraph (b)(5).

■ c. Revising paragraph (c) introductory text.

■ d. Removing and reserving paragraph (c)(1).

■ e. Revising paragraphs (c)(2), (c)(3) introductory text, and (c)(4) introductory text.

■ f. Adding paragraph (c)(5).

■ g. Revising paragraph (d)(3).

■ h. Revising paragraph (h).

The revisions and additions read as follows:

**§ 98.466 Data reporting requirements.**

* * * * *

(b) * * *

(1) The number of waste steams (including ''Other Industrial Solid Waste (not otherwise listed)'' and ''Inerts'') for which Equation TT–1 of this subpart is used to calculate modeled $CH_4$ generation.

* * * * *

(5) For each waste stream, the decay rate (k) value used in the calculations.

(c) Report the following historical waste information:

* * * * *

(2) For each waste stream identified in paragraph (b) of this section, the method(s) for estimating historical waste disposal quantities and the range of years for which each method applies.

(3) For each waste stream identified in paragraph (b) of this section for which Equation TT–2 of this subpart is used, provide:

* * * * *

(4) If Equation TT–4a of this subpart is used, provide:

* * * * *

(5) If Equation TT–4b of this subpart is used, provide:

(i) WIP (i.e., the quantity of waste in-place at the start of the reporting year from design drawings or engineering estimates (metric tons) or, for closed landfills for which waste in-place quantities are not available, the landfill's design capacity).

(ii) The cumulative quantity of waste placed in the landfill for the years for which disposal quantities are available from company record or from Equation TT–3 of this part.

(iii) YrLast.

(iv) YrOpen.

(v) NYrData.

(d) * * *

(3) For each waste stream, the degradable organic carbon ($DOC_X$) value (mass fraction) for the specified year and an indication as to whether this was the default value from Table TT–1 to this subpart, a measured value using a 60-day anaerobic biodegradation test as specified in § 98.464(b)(4)(i), or a value based on total and volatile solids measurements as specified in § 98.464(b)(4)(ii). If $DOC_x$ was determined by a 60-day anaerobic biodegradation test, specify the test method used.

* * * * *

(h) For landfills with gas collection systems, in addition to the reporting requirements in paragraphs (a) through (f) of this section, provide:

(1) The annual methane generation, adjusted for oxidation, calculated using Equation TT–6 of this subpart, reported in metric tons $CH_4$.

(2) The oxidation factor used in Equation TT–6 of this subpart.

(3) All information required under 40 CFR 98.346(i)(1) through (7) and 40 CFR 98.346(i)(9) through (12).

■ 117. Section 98.467 is revised to read as follows:

**§ 98.467 Records that must be retained.**

In addition to the information required by § 98.3(g), you must retain the calibration records for all monitoring equipment, including the method or manufacturer's specification used for calibration, and all measurement data used for the purposes of paragraphs § 98.460(c)(2)(xii) or (xiii) or used to determine waste stream-specific $DOC_X$ values for use in Equation TT–1 of this subpart.

■ 118. Section 98.468 is amended by adding a definition of ''Industrial sludge'' in alphabetical order to read as follows:

**§ 98.468 Definitions.**

* * * * *

*Industrial sludge* means the residual, semi-solid material left from industrial wastewater treatment processes or wet air pollution control devices (e.g., wet scrubbers). *Industrial sludge* includes underflow material collected in primary or secondary clarifiers, settling basins,

or precipitation tanks as well as dredged materials from wastewater tanks or impoundments. *Industrial sludge* also includes the semi-solid materials remaining after these materials are dewatered via a belt process, centrifuge, or similar dewatering process.

* * * * *

■ 119. Table TT–1 to subpart TT is amended by:

■ a. Revising the first four entries.

■ b. Adding a new entry following ''Construction and Demolition''.

TABLE TT–1 TO SUBPART TT—DEFAULT DOC AND DECAY RATE VALUES FOR INDUSTRIAL WASTE LANDFILLS

| Industry/waste type | DOC (weight fraction, wet basis) | k [dry climate [a]] ($yr^{-1}$) | k [moderate climate [a]] ($yr^{-1}$) | k [wet climate [a]] ($yr^{-1}$) |
|---|---|---|---|---|
| Food Processing (other than industrial sludge) | 0.22 | 0.06 | 0.12 | 0.18 |
| Pulp and Paper (other than industrial sludge) | 0.20 | 0.02 | 0.03 | 0.04 |
| Wood and Wood Product (other than industrial sludge) | 0.43 | 0.02 | 0.03 | 0.04 |
| Construction and Demolition | 0.08 | 0.02 | 0.03 | 0.04 |
| Industrial Sludge | 0.09 | 0.02 | 0.04 | 0.06 |

* * * * * * *

[a] The applicable climate classification is determined based on the annual rainfall plus the recirculated leachate application rate. Recirculated leachate application rate (in inches/year) is the total volume of leachate recirculated from company records or engineering estimates and applied to the landfill divided by the area of the portion of the landfill containing waste [with appropriate unit conversions].

(1) Dry climate = precipitation plus recirculated leachate less than 20 inches/year

(2) Moderate climate = precipitation plus recirculated leachate from 20 to 40 inches/year (inclusive)

(3) Wet climate = precipitation plus recirculated leachate greater than 40 inches/year

Alternatively, landfills that use leachate recirculation can elect to use the k value for wet climate rather than calculating the recirculated leachate rate.

## Subpart UU—[AMENDED]

■ 120. Section 98.473 is amended by:

■ a. Revising the parameter ''D'' of Equation UU–2 in paragraph (a)(2).

■ b. Revising the parameter ''$S_{r,p}$'' of Equation UU–2 in paragraph (b)(2).

The revisions read as follows:

### § 98.473 Calculating $CO_2$ received.

(a) * * *

(2) * * *

* * * * *

D = Density of $CO_2$ at standard conditions (metric tons per standard cubic meter): 0.0018682.

* * * * *

(b) * * *

(2) * * *

* * * * *

$S_{r,p}$ = Quarterly volume of contents in containers r that is redelivered to another facility without being injected into your well in quarter p (standard cubic meters).

* * * * *

■ 121. Section 98.476 is amended by revising paragraph (b)(5) and adding paragraph (e) to read as follows:

### § 98.476 Data reporting requirements.

* * * * *

(b) * * *

(5) The standard or method used to calculate each value in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

* * * * *

(e) Report the following:

(1) Whether the facility received a Research and Development project exemption from reporting under 40 CFR part 98, subpart RR, for this reporting year. If you received an exemption, report the start and end dates of the exemption approved by EPA.

(2) Whether the facility includes a well or group of wells where a $CO_2$ stream was injected into subsurface geologic formations to enhance the recovery of oil during this reporting year.

(3) Whether the facility includes a well or group of wells where a $CO_2$ stream was injected into subsurface geologic formations to enhance the recovery of natural gas during this reporting year.

(4) Whether the facility includes a well or group of wells where a $CO_2$ stream was injected into subsurface geologic formations for acid gas disposal during this reporting year.

(5) Whether the facility includes a well or group of wells where a $CO_2$ stream was injected for a purpose other than those listed in paragraphs (e)(1) through (4) of this section. If you injected $CO_2$ for another purpose, report the purpose of the injection.

[FR Doc. 2013–27996 Filed 11–27–13; 8:45 am]

BILLING CODE 6560–50–P

# FEDERAL REGISTER

Vol. 78 Friday,

No. 230 November 29, 2013


Part VII

## The President

Memorandum of October 28, 2013—Delegation of Functions Under Sections 1261(b) and 1262(a) of Public Law 112–239

Federal Register
Vol. 78, No. 230
Friday, November 29, 2013

# Presidential Documents

**Title 3—**

## The President

**Memorandum of October 28, 2013**

## Delegation of Functions Under Sections 1261(b) and 1262(a) of Public Law 112–239

**Memorandum for the Secretary of State [and] the Secretary of Commerce**

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State the functions of the President under section 1261(b) and to the Secretary of Commerce the functions of the President under section 1262(a) of the National Defense Authorization Act for Fiscal Year 2013, Public Law 112–239.

The Secretary of State shall consult, as appropriate, the heads of other executive departments and agencies in the performance of his responsibilities under this memorandum.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
*Washington, October 28, 2013.*

[FR Doc. 2013–28857
Filed 11–27–13; 11:15 am]
Billing code 4710–10

# Reader Aids

**Federal Register**

Vol. 78, No. 230

Friday, November 29, 2013

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

## FEDERAL REGISTER PAGES AND DATE, NOVEMBER

65515–65868 ..... 1
65869–66248 ..... 4
66249–66620 ..... 5
66621–66824 ..... 6
66825–66994 ..... 7
66995–67288 ..... 8
67289–67924 ..... 12
67925–68324 ..... 13
68325–68686 ..... 14
68687–68980 ..... 15
68981–69284 ..... 18
69285–69534 ..... 19
69535–69752 ..... 20
69753–69982 ..... 21
69983–70188 ..... 22
70189–70484 ..... 25
70485–70846 ..... 26
70847–71434 ..... 27
71435–71986 ..... 29

## CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**1 CFR**

**Proposed Rules:**
51 ..... 69006, 69594

**3 CFR**

**Proclamations:**
9047 ..... 66605
9048 ..... 66607
9049 ..... 66609
9050 ..... 66611
9051 ..... 66613
9052 ..... 66615
9053 ..... 66617
9054 ..... 66619
9055 ..... 67287
9056 ..... 68325
9057 ..... 69533
9058 ..... 69751
9059 ..... 70189
9060 ..... 70841
9061 ..... 71433

**Executive Orders:**
13653 ..... 66819
13654 ..... 70843

**Administrative Orders:**
Notices:
Notice of October 30, 2013 ..... 65867
Notice of November 7, 2013 ..... 67289
Notice of November 12, 2013 ..... 68323

**Memorandums:**
Memorandum of October 28, 2013 ..... 71985

**5 CFR**

733 ..... 66825
850 ..... 68981
2641 ..... 70191

**Proposed Rules:**
1201 ..... 67076

**6 CFR**

5 ..... 69983
1001 ..... 66995
1002 ..... 66995
1003 ..... 66995

**7 CFR**

27 ..... 68983
271 ..... 65515
274 ..... 65515
319 ..... 69285
457 ..... 70485
761 ..... 65523
762 ..... 65523
765 ..... 65523
766 ..... 65523
772 ..... 65523
948 ..... 69985, 70191
980 ..... 70191
1726 ..... 69286

**Proposed Rules:**
245 ..... 65890
905 ..... 67977
1211 ..... 67979, 68298
3550 ..... 65582

**8 CFR**

**Proposed Rules:**
214 ..... 69778

**9 CFR**

94 ..... 68327
317 ..... 66826
318 ..... 66826
320 ..... 66826
327 ..... 66826
331 ..... 66826
381 ..... 66826
412 ..... 66826
424 ..... 66826

**Proposed Rules:**
3 ..... 70515

**10 CFR**

95 ..... 69286
430 ..... 68331
770 ..... 67295

**Proposed Rules:**
2 ..... 66660
40 ..... 67224, 67225, 71532
50 ..... 68774
51 ..... 65903, 66858
55 ..... 68774
70 ..... 67224, 67225, 71532
72 ..... 67224, 67225, 71532
74 ..... 67224, 67225, 71532
150 ..... 67224, 67225, 71532
429 ..... 66202, 67319
430 ..... 66202
431 ..... 66202

**12 CFR**

204 ..... 66249
213 ..... 70193
226 ..... 70194
252 ..... 71435
652 ..... 65541
1002 ..... 69753
1005 ..... 66251, 69753
1013 ..... 70193
1024 ..... 68343, 69753
1026 ..... 69753, 70194
1267 ..... 67004
1269 ..... 67004
1270 ..... 67004

**Proposed Rules:**
50 ..... 71818
249 ..... 71818
329 ..... 71818
380 ..... 66661
702 ..... 65583

1006 ....67848

**13 CFR**

121 ....70847

**14 CFR**

21 ....68687
25 ....67291, 68985, 68986, 70848, 70849
34 ....65554
39 ....65869, 65871, 66252, 66254, 66258, 67009, 67011, 67013, 67015, 67018, 67020, 67022, 68345, 68347, 68352, 68355, 68357, 68360, 68688, 68691, 68693, 68697, 69987, 69989, 70196, 70198, 70200, 70202, 70205, 70207, 70209, 70211, 70214, 70216, 70487, 70489, 70851
45 ....65554
61 ....66261
71 ....65554, 65555, 65556, 67024, 67292, 67293, 67294, 67295, 67296, 67297, 67298, 67299, 68699
73 ....70854
91 ....68360
95 ....68699
97 ....68702, 68704, 70491, 70494
117 ....69287
121 ....67800, 69287
382 ....67882, 67918
399 ....67882

**Proposed Rules:**

Ch. I ....69789
25 ....66317, 67077, 67320, 67321, 67323, 68775
39 ....66666, 66668, 66859, 66861, 69316, 69318, 69320, 69594, 69595, 69597, 69600, 69785, 70003, 70240, 70242, 70892, 71532
71 ....67324, 68777, 69787, 70895, 70900
121 ....67983
135 ....66865
1260 ....68375, 68376
1273 ....68375
1274 ....68375, 68376

**15 CFR**

30 ....67927
400 ....69288
748 ....69535

**16 CFR**

1 ....65557
254 ....68987
801 ....68705
1500 ....66840

**Proposed Rules:**

1115 ....69793

**17 CFR**

1 ....68506
3 ....68506
15 ....69178
17 ....69178
18 ....69178
20 ....69178
22 ....68506
23 ....66621
30 ....68506
140 ....68506
190 ....66621
200 ....67468
240 ....67468
249 ....67468

**Proposed Rules:**

150 ....68946
170 ....67078, 67985
200 ....66428
227 ....66428
232 ....66428
239 ....66428
240 ....66428
249 ....66428
300 ....66318

**18 CFR**

38 ....70164
40 ....71448
284 ....70164

**19 CFR**

103 ....70855

**Proposed Rules:**

351 ....69322

**20 CFR**

404 ....66638
416 ....66638
655 ....69538, 69539, 69541

**Proposed Rules:**

404 ....69324
416 ....70244

**21 CFR**

1 ....69543
14 ....69991
73 ....68713
123 ....69992
172 ....71457
173 ....71457
178 ....71457
180 ....71457
510 ....66263
520 ....66263
522 ....66263
558 ....66263, 69992, 70496
886 ....68714
1240 ....66841
1308 ....68716

**Proposed Rules:**

Ch. I ....65588, 70248
1 ....69602, 69603, 69604
16 ....69006, 69603, 69604, 69605
20 ....65904
106 ....69604
110 ....69604
112 ....69006, 69605
114 ....69604
117 ....69604
120 ....69604
123 ....69604
129 ....69604
179 ....69604
211 ....69604
310 ....65904
314 ....65904, 67985
600 ....65904
601 ....67985
1308 ....65923

**22 CFR**

41 ....66814, 68992
230 ....66841
502 ....67025

**Proposed Rules:**

226 ....69802

**24 CFR**

50 ....68719
55 ....68719
58 ....68719

**Proposed Rules:**

214 ....66670

**25 CFR**

151 ....67928

**Proposed Rules:**

226 ....65589

**26 CFR**

1 ....66639, 68735, 70856, 71467
31 ....71467, 71475
54 ....68240
57 ....71476
602 ....71476

**Proposed Rules:**

1 ....68779, 68780, 70901, 71535
31 ....71542
300 ....65932

**28 CFR**

16 ....69753

**29 CFR**

1910 ....66641, 66642, 69543
1926 ....66641, 66642
2590 ....68240
4022 ....68739

**Proposed Rules:**

1904 ....67254, 68782
1910 ....65932, 69606
1926 ....65932
1952 ....67254, 68782

**30 CFR**

**Proposed Rules:**

75 ....68783
936 ....66671

**32 CFR**

319 ....69550, 69551
320 ....69289, 39291
701 ....69552

**33 CFR**

100 ....66844, 67026, 68995, 71492
110 ....67300
117 ....65873, 65874, 66265, 66266, 67027, 67938, 69995, 70218, 70220, 70496
141 ....69292
151 ....67027
155 ....67027
160 ....67027
165 ....65874, 66267, 66269, 67028, 68995, 70222, 70858, 71495

**Proposed Rules:**

97 ....68784
100 ....69007, 71543
117 ....67084, 67999, 69803
140 ....67326
141 ....67326
142 ....67326
143 ....67326
144 ....67326
145 ....67326
146 ....67326
147 ....67326
160 ....68784
165 ....67086, 68002, 70901, 71546
334 ....70005

**34 CFR**

Ch. III ....66271
Ch. VI ....69612
668 ....65768
674 ....65768
682 ....65768
685 ....65768

**Proposed Rules:**

200 ....69336
300 ....71549
Ch. VI ....66865

**36 CFR**

1191 ....67303

**37 CFR**

201 ....71497
381 ....71501
384 ....66276
385 ....67938
386 ....71501

**Proposed Rules:**

1 ....71870
3 ....71870
5 ....71870
11 ....71870

**38 CFR**

17 ....68364, 70863

**Proposed Rules:**

3 ....71042
5 ....71042
17 ....69614

**39 CFR**

20 ....69755
111 ....69553
3010 ....67951

**Proposed Rules:**

3050 ....69805, 70904

**40 CFR**

9 ....66279
19 ....66643
52 ....65559, 65875, 65877, 66280, 66648, 66845, 67036, 67307, 67952, 68365, 68367, 68997, 69296, 69299, 69773, 69995, 69998, 70497, 71502, 71504, 71507
60 ....71510
61 ....71510
63 ....71510
81 ....66845
98 ....68162, 71904
180 ....65561, 65565, 66649, 66651, 67038, 67042, 67048, 68741, 69562, 70864, 70870, 70878, 71523
271 ....70225
300 ....66283, 69302, 70231
372 ....66848
721 ....65570, 66279

**Proposed Rules:**

51 ....69806
52 ....65590, 65593, 66320, 67090, 67327, 68005, 68377,

68378, 69337, 69625, 69812, 70007, 70248, 70516, 71550, 71554
63.....66108, 66321
69.....70248
80.....69628, 71732
98.....66674, 69337
131.....70905
174.....70007
180.....70906
271.....70255
300 .....66325, 69360, 70256

**41 CFR**

102–118.....71528

**42 CFR**

433.....66852

**Proposed Rules:**

84.....69361
412.....71555

**44 CFR**

64 .....65882, 68999, 69001, 70235
206.....66852

**45 CFR**

146.....68240
147.....68240
153.....66653
155.....66653
156.....66653
157.....66653
158.....66653
170.....65884

**Proposed Rules:**

1613.....65933

**46 CFR**

**Proposed Rules:**

97.....68784

**47 CFR**

1 .....66287, 66288, 70499
22.....66288, 70499
25.....67309
27 .....66288, 66298, 70237, 70499
54.....70238, 70881
64.....67956
69.....67053
73 .....66288, 67310, 70499
74.....66288, 70499
90.....70499

**Proposed Rules:**

Ch. I.....65601
4.....69018
64.....68005
73 .....68384, 69629, 70907, 71557
76.....70907
90.....65594

**48 CFR**

Ch. 1.....70476, 70482
12.....70477
22.....70480
25.....70480
31.....70481
32.....70477
52 .....70477, 70480, 70481
204.....69273
208.....69268
212.....69268, 69273
215.....69268
225.....69282
233.....69268
239.....69268
244.....69268
252 .....69288, 69273, 69283

**Proposed Rules:**

1.....69812
2.....69812
9.....69812
12.....69812
22.....69812
52.....69812
927.....66865
952.....66865
970.....66865

**49 CFR**

27.....67882
172.....69310
236.....70888
238.....71786
239.....71786
571.....68748, 70416
575.....66655
1121.....71529
1150.....71529
1180.....71529

**Proposed Rules:**

26.....68016
173.....66326
174.....66326
178.....66326
179.....66326
180.....66326
572.....69944
582.....71558

**50 CFR**

10.....65844
17 .....68370, 69569, 70001
20.....65573
21 .....65576, 65578, 65844
223.....66140, 69310
224.....66140
300 .....65887, 69002, 70002
622 .....68372, 68373, 71529, 71530
635.....68757, 70500
648 .....65888, 66857, 70890
660.....68764, 70509
679 .....68374, 69591, 69592

**Proposed Rules:**

17 .....65936, 65938, 68660, 70104, 70525
21.....65953, 65955
100.....66885
223.....66675, 69033
224.....66675, 69033
226.....65959
242.....66885
635.....66327
648.....66887, 70009
679.....65602, 68390

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List November 25, 2013**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.