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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1412

**RIN 0560–AI22**

## Cotton Transition Assistance Program and General Provisions for Agriculture Risk Coverage and Price Loss Coverage Programs

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the new Cotton Transition Assistance Program (CTAP) authorized by the Agricultural Act of 2014 (the 2014 Farm Bill). It also includes general provisions needed to implement CTAP, the Agriculture Risk Coverage (ARC), and Price Loss Coverage (PLC) Programs. ARC and PLC will be implemented through a separate rulemaking and will provide benefits for other commodities. CTAP is a temporary program that provides payments to producers on farms for which cotton base acres were in existence as of September 30, 2013, as adjusted. It will operate for only the 2014 crop year and in certain counties for the 2015 crop year, and is intended to be a transition for producers on farms with upland cotton base acres that were in existence as of September 30, 2013, between the previous Direct and Counter-cyclical Payments Program (DCP) and the new Stacked Income Protection Plan (STAX), which is authorized to begin no later than the 2015 crop year.

**DATES:** *Effective Date:* August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Brent Orr; telephone: (202) 720–7641. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 1119 of the 2014 Farm Bill (Pub. L. 113–79) authorizes CTAP for producers on farms ''for which cotton base acres were in existence for the 2013 crop year.'' CTAP is only authorized for the 2014 crop year, and for the 2015 crop year in counties where STAX is not available. STAX, as specified in section 11017 of the 2014 Farm Bill, is required to become available no later than the 2015 crop year, but is not required to provide coverage for every county in 2015. (USDA's Risk Management Agency is implementing STAX.) CTAP has some similarities to the direct payment aspect of DCP, for upland cotton only. The new ARC and PLC Programs authorized by sections 1116 and 1117 of the 2014 Farm Bill, respectively, which are being implemented through separate rulemaking, provide benefits for the commodities, other than upland cotton, that were previously covered by DCP.

The 2014 Farm Bill specifies that CTAP payments will be based on the farm's upland cotton base acres that were ''in existence for the 2013 crop year.'' Accordingly, the 2014 CTAP payments will be made available to eligible producers on farms for which cotton base acres were in existence as of September 30, 2013, as adjusted. STAX is scheduled to be available in some counties beginning with the 2015 crop year; producers on a farm located in a county where STAX is available will not be eligible for CTAP for the 2015 crop year. In counties where STAX is not available for the 2015 crop year, producers on farms for which 2013 upland cotton base acres were in existence as of September 30, 2013, as adjusted, will be eligible for 2015 CTAP payments after October 1, 2015. This rule specifies the eligibility requirements for CTAP, which are different for 2014 and 2015 because of the provision involving STAX availability. Similar to DCP, producers do not have to actually grow or harvest upland cotton to be eligible for CTAP. However, producers must have an interest in the upland cotton base acres on the farm and must meet or satisfy other payment eligibility requirements (including average adjusted gross income requirements, conservation compliance provisions, and actively engaged in farming) to be eligible for CTAP.

The regulations for CTAP, ARC, and PLC will be specified in 7 CFR part 1412. Some definitions and requirements for base acres that are needed for all three programs are specified in this rule. For example, as specified in the 2014 Farm Bill, base acres of upland cotton in effect on September 30, 2013, are defined as generic base acres for the purposes of ARC and PLC. As another example, provisions for double cropping and replacement crops are similar to those for DCP, but the definitions are being revised to remove references to DCP and to insert references to CTAP, ARC, and PLC. Additional terms ''eligible subsequently planted crop acreage'' and ''subsequently planted crop acreage'' are added as those terms have different applicable meanings under the 2014 Farm Bill. Under section 1114 of the 2014 Farm Bill, subsequently planted crop acreage can be used as payment acres or for attributing generic base acres if the initial crop is any crop other than a covered commodity. These subsequently planted crop acres are termed ''eligible subsequently planted crop acreage.'' The term ''subsequently planted crop acreage'' is also added to distinguish it from ''eligible subsequently planted crop acreage'' by virtue of it following any planted and considered planted (P&CP) covered commodity not in an approved double cropping sequence. To reiterate, ''eligible subsequently planted crop acreage'' may be used to determine payment acres under ARC or PLC and to attribute generic base acres on a farm; ''subsequently planted crop acreage'' may be used to facilitate base acre reallocation. Common provisions in 7 CFR 718 that apply to all FSA and CCC programs, including those for base acres and farm reconstitutions, apply to CTAP.

### Eligible Land and Payment Amounts for CTAP

The eligible land for CTAP in 2014 and 2015 is based on the farm's upland cotton base acres that were in existence for the 2013 crop year, as of September 30, 2013, adjusted, including, but not limited to, adjustments for expired, terminated, or released Conservation Reserve Program (CRP) land, and limited by the total number of cropland

acres on the farm (cropland is defined in 7 CFR 718.2). A producer's share interest in cropland on a farm must be equal to or greater than that producer's share interest in cotton base acres on the farm for that crop year, as reported on that farm's acreage report. FSA will verify and confirm the producer's share interest in cotton base acres reported on the CTAP application by comparing it to the producer's share interest in the cropland as reported on that farm's acreage report for that crop year. For example, if a farm has 50 base acres of cotton and two producers report equal shares of those 50 base acres of cotton, each must each have a 100 percent share interest in at least 25 reported cropland acres on that farm's acreage report for the same crop year to support their reported share of cotton base acres on that farm.

Section 1119(c) of the 2014 Farm Bill states that the CTAP payment amount is equal to the number of adjusted base acres of upland cotton divided by the national program yield for upland cotton of 597 pounds per acre times the transition assistance rate for upland cotton times the farm's DCP yield, times a specified percentage payment rate. The 2014 Farm Bill specifies that the transition assistance rate of upland cotton is the June 12, 2013, midpoint estimate for the marketing year average price of upland cotton for the marketing year beginning August 1, 2013, less the December 10, 2013, midpoint estimate for the marketing year average price of upland cotton for the marketing year beginning August 1, 2013, as contained in the applicable World Agricultural Supply and Demand Estimates report published by USDA, multiplied by the national program yield for upland cotton of 597 pounds per acre. Mathematically, the 597 pounds per acre cancels out of the above equation. Accordingly, the transition assistance rate can be restated as simply the difference between the August 1, 2013, and the December 10, 2013, midpoint estimates. FSA has calculated the transition assistance rate to be $0.09 per pound. The payment rates, as specified in the 2014 Farm Bill are: 60 percent for the 2014 crop year and 36.5 percent for the 2015 crop year. Therefore, the payment per base acre of upland cotton for 2014 would be $0.09, times the farm's DCP yield, times 60 percent. If the farm's DCP yield was 500 pounds, that payment would be $27.00 an acre. For 2015 it would be $0.09, times the farm's DCP yield, times 36.5 percent. If the farm's DCP yield was 500 pounds, that payment would be $16.425 an acre.

CTAP payments will be made to eligible producers on or after October 1 of the crop year when upland cotton is or ordinarily would have been harvested. Similar to DCP, payment eligibility is based upon the number of upland cotton base acres, which are not required to be planted to cotton. As discussed earlier, eligibility for CTAP in 2015 is determined in part by the availability of STAX.

**Eligible Acreage Reductions for ARC and PLC**

ARC and PLC have similar provisions to the former DCP with regard to planting flexibility and reductions for plantings of fruits, vegetables, and wild rice on base acres. The acreage reduction provisions apply to ARC and PLC, but not to CTAP. However, we are specifying them in this rule so that producers are informed of how generic acres and acreage reductions will be used in the payment calculations for ARC and PLC.

Similar to DCP, the planting or harvesting of perennial or non-perennial fruits, vegetables (except mung beans and pulse crops), or wild rice will result in an acre for acre payment reduction for ARC and PLC (but not CTAP), unless an exception applies for double cropped acreage in approved double cropping counties. Under DCP, the reduction was applied beginning with the covered commodity or peanut acres with the lowest direct payment amount per acre until the acreage reduction amount was met. In addition, producers could agree to adjust the DCP acre reduction between covered commodities and peanuts on the farm, but only to the extent that the total acre reduction amount did not change for the farm, and all producers affected by the adjustment agreed to the adjustment in writing. Under CTAP, ARC, and PLC, as specified in the 2014 Farm Bill, peanuts are now a covered commodity, upland cotton is not a covered commodity, and what were upland cotton base acres under the 2008 Farm Bill are now generic base acres that will be counted as acres of covered commodities if planted (or considered planted). Therefore, determining the acres that have the lowest payment amount per acre for all covered commodities for ARC and PLC on the farm is more complicated than under DCP.

This rule specifies that in determining reductions to base acres that are payment acres for ARC and PLC (only payment acres are reduced, not base acres) the acreage of any fruit or vegetable will first be attributed to cropland not having base acres, followed by base acres, before applying any payment acreage reduction that is required by this rule. The reduction will be attributed to each of the covered commodities on the farm having payment acres on a pro rata basis to reflect the ratio of the payment acres of the covered commodity on the farm to the total payment acres of all covered commodities on the farm. The reductions are required by the 2014 Farm Bill; the pro rata procedure for determining the reductions is discretionary and within FSA's authority.

**CTAP Payment Limits, Eligible Persons and Legal Entities**

As specified in the 2014 Farm Bill and in 7 CFR part 1400, payment limits and average adjusted gross income (AGI) limits apply to CTAP. CTAP payments in each of the 2014 and 2015 program years are limited to $40,000 per person or legal entity, similar to the $40,000 per person or legal entity limitation that applied to DCP under the 2008 Farm Bill. A person or legal entity is ineligible for payments if the person's or legal entity's AGI for the applicable compliance program year is in excess of $900,000. Similar to how AGI provisions applied to members of legal entities in the 2008 Farm Bill, under the 2014 Farm Bill if a person with an indirect interest in a legal entity has AGI in excess of $900,000, the CTAP payments subject to AGI compliance provisions to the legal entity will be reduced as calculated based on the percent interest of the person in the legal entity receiving the payment. AGI will be calculated based on the average income for the 3 taxable years preceding the most immediately preceding complete taxable year for which benefits are requested. For example, the relevant years used to calculate AGI for 2014 CTAP are the 2010, 2011, and 2012 tax years. For 2015 CTAP the relevant years are the 2011, 2012, and 2013 tax years.

To be eligible for CTAP, each producer is required to be a person or legal entity who is actively engaged in farming and otherwise eligible for payment, as specified in 7 CFR part 1400, and who complies with requirements including, but not limited to, those pertaining to highly erodible land conservation and wetland conservation provisions (commonly referred to as the conservation compliance provisions) specified in 7 CFR part 12.

Appeal regulations specified in 7 CFR parts 11 and 780 apply. FSA program requirements and determinations that are not in response to, or result from, an individual. disputable set of facts in an individual participant's application for assistance are not matters that can be appealed. Crop insurance is not

required as a condition of eligibility for CTAP.

**Sharing CTAP Payments Between Multiple Producers on a Farm**

The procedures to determine shared payments will be similar to those used for DCP. Each eligible producer on a farm will be given the opportunity to apply for CTAP and receive CTAP payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the FSA county committee. Each producer leasing a farm is required to provide a copy of their written lease to the county committee and, in the absence of a written lease, is required to provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease. An owner's or landlord's signature, as applicable, affirming a zero share on an application for CTAP may be accepted as evidence of a cash lease between the owner or landlord and tenant, as applicable, as determined by CCC. Such signature or signatures, if entered on the application for CTAP to satisfy the requirement of furnishing a written lease, is required to be entered on the application by October 7, 2014 for 2014 CTAP and by July 31, 2015, for 2015 CTAP. When a farm's 2013 base acres of upland cotton are leased in 2014 or 2015 on a share basis, neither the landlord nor the tenant will receive 100 percent of CTAP for the farm. CCC will approve an application for CTAP and approve the division of payment when all the following, as applicable, occur or have been determined to have occurred:

(1) Landlords, tenants, and sharecroppers sign the application and agree to the payment shares shown; and

(2) CCC determines that the interests of tenants and sharecroppers are being protected; and

(3) CCC determines that the payment shares do not circumvent either the provisions of this rule or the provisions of 7 CFR part 1400.

**Signup Deadlines for 2014 and 2015 CTAP**

Section 1119 of the 2014 Farm Bill authorizes CTAP, which is not to be paid before October 1 of the calendar year in which the crop of upland cotton is harvested. This means that FSA cannot make 2014 CTAP payments before October 1, 2014. However, signup for payments can occur earlier. FSA is exercising discretion and establishing a signup deadline of October 7, 2014, for 2014 CTAP so as to not delay CTAP payments. We anticipate that most producers who enrolled 2013 cotton base acres in 2013 DCP or the Average Crop Revenue Election (ACRE) Program will likely choose to apply for CTAP. For 2015 CTAP, the signup deadline will be July 31, 2015.

Applications for CTAP are independent of any election and participation in ARC or PLC. It is possible for upland cotton base acres eligible for CTAP to also qualify as eligible generic base acres for ARC and PLC, and (more commonly) for a farm to have some cotton base acres eligible for CTAP and base acres for different commodities eligible for ARC and PLC. A producer needs to separately elect and enroll in ARC or PLC to be eligible for those benefits. The application for CTAP has no bearing on ARC or PLC elections or decision to participate in ARC or PLC. Likewise, persons or legal entities that enroll and elect ARC or PLC and who do not file an application for 2014 or 2015 CTAP in accordance with this rule will not be paid for 2014 or 2015 CTAP, even if those acres were eligible for CTAP.

**Miscellaneous and Conforming Amendments**

This rule revises 7 CFR part 1412, which had been the regulations for DCP and ACRE, and will now be the regulations for ARC, PLC, and CTAP.

Many of the provisions that applied to DCP and ACRE will also apply to ARC, PLC, and CTAP, and are therefore included in this rule with the required revisions. These include the provisions for planting flexibility and double cropping, and provisions relating to tenants, sharecroppers, offsets, assignments, acreage, and production reporting.

This rule revises definitions in 7 CFR part 1412 as required to implement ARC, PLC, and CTAP. For example, the definition of ''contract period'' is revised to specify the contract periods for 2014 through 2018 ARC and PLC. (CTAP uses applications; ARC and PLC use contracts.) A definition for generic base acres is added, as specified in the 2014 Farm Bill. The definition of ''replacement crop'' is revised to refer to both covered commodities and upland cotton, since cotton is no longer a covered commodity. A definition of ''temperate japonica rice'' is added as a type of medium grain rice, as specified in the 2014 Farm Bill.

**Structure of the Regulation**

This rule revises 7 CFR part 1412, adding the regulations for CTAP and some of the regulations for ARC and PLC, and removing all the regulations for DCP and ACRE as discussed above. The revised 7 CFR part 1412 will use a similar subpart structure to the previous DCP and ACRE regulations. The new title of the part is ''Agriculture Risk Coverage, Price Loss Coverage, and Cotton Transition Assistance Program.'' Subpart A will cover general administration; subpart B will cover base acres; subpart C will cover yields for ARC and PLC; subpart D will cover ARC and PLC contract terms and enrollment provisions; subpart E will cover financial considerations including sharing payments; subpart F will cover violations; subpart G will cover PLC and ARC election; and subpart H will cover CTAP. Subparts C and G will be added in the separate rulemaking to implement the ARC and PLC Programs. This rule includes the sections needed to implement CTAP, and includes some sections that also apply to ARC and PLC, or that involve generic base acres as discussed above. Sections in 7 CFR part 1412 that apply only to ARC and PLC will be added in a subsequent rulemaking.

**Notice and Comment**

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. The regulations to implement the provisions of Title I and the administration of Title I of the 2014 Farm Bill are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

**Effective Date**

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. Subsection 1601(c)(2) of the 2014 Farm Bill makes this final rule exempt from notice and comment. Therefore, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to provide adequate notice to producers

about the new CTAP regulation so they will be ready to begin sign-up for CTAP in summer 2014, so that payments can be provided as soon as possible on or after October 1, 2014. Therefore, to begin providing benefits to producers in a timely fashion, this final rule is effective when published in the **Federal Register**.

**Executive Orders 12866 and 13563**

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. This regulatory action is being taken to implement a major budgetary program required by the 2014 Farm Bill. Consistent with OMB guidance, this type of action is considered a budgetary transfer representing a payment from taxpayers to program beneficiaries unrelated to the provision of any goods or services in exchange for the payment. As such, there are no economic gains, because the benefits and payments to those who receive such a transfer are matched by the costs borne by taxpayers. The estimated transfer payments for CTAP provided by this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

**Cost Benefit Analysis Summary**

CTAP payments are estimated to be $572.1 million for 2014 and $1.6 million for 2015. In 2013, approximately 122,000 producers enrolled upland cotton base acres in DCP and ACRE. For 2014, we estimate a similar number of producers and farms will apply for 2014 CTAP payments totaling $572.1 million. For 2015, we estimate approximately 18,000 producers with 2013 upland cotton base acres in areas where STAX has not yet been implemented will apply for CTAP payments totaling $1.6 million.

Some producers with cotton base acres did not enroll those acres in DCP and ACRE. If those producers apply for CTAP, meaning that every potentially eligible cotton base acre generates a CTAP payment, the estimates would be slightly higher, at $624 million for 2014 and $1.8 million for 2015.

There is a payment limit of $40,000 per year per person or legal entity for CTAP.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by any law to publish a proposed rule for public comment for this rulemaking initiative.

**Environmental Review**

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that participation in programs similar to those currently found in 7 CFR 1412 will not significantly affect the quality of the human environment (7 CFR part 799.9(d)). Therefore no environmental assessment or environmental impact statement will be prepared.

**Executive Order 12372**

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

**Executive Order 13132**

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

**Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

**The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory

actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)**

This rule is a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121, SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Section 1601(c)(3) of the 2014 Farm Bill provides that the authority in Section 808 of SBREFA will be used in implementing the changes required by Title I of the 2014 Farm Bill, such as for the changes being made by this rule. Consistent with section 1601(c)(3) of the 2014 Farm Bill, FSA therefore finds that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of CTAP as specified in the 2014 Farm Bill. The regulation needs to be effective to provide adequate time for producers to be ready to begin the sign-up process in a timely fashion and make payments as soon as possible after October 1, 2014. Therefore, this rule is effective when published in the **Federal Register**.

**Federal Assistance Programs**

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.113—Agriculture Risk Coverage
10.112—Price Loss Coverage
10.114—Cotton Transition Assistance Program

**Paperwork Reduction Act of 1995**

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in subsection 1601(c)(2)(B) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

**E-Government Act Compliance**

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

**List of Subjects in 7 CFR Part 1412**

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

For the reasons discussed above, CCC revises 7 CFR part 1412 to read as follows:

## PART 1412—AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS

### Subpart A—General Provisions

Sec.
1412.1 Applicability, changes in law, interest, application, and contract provisions.
1412.2 Administration.
1412.3 Definitions.
1412.4 Appeals.

### Subpart B—Establishment of Base Acres for a Farm for Covered Commodities

1412.23 Base acres, generic base acres, and Conservation Reserve Program.
1412.24 Limitation of total base acres and generic base acres on a farm.

### Subpart D— ARC and PLC Contract Terms and Enrollment Provisions for Covered Commodities

1412.44 Notification of base acres.
1412.45 Treatment of generic base acres.
1412.46 Planting flexibility.
1412.49 Matters of general applicability.

### Subpart E—Financial Considerations Including Sharing Payments

1412.51 Limitation of payments.
1412.54 Sharing of payments.
1412.55 Provisions relating to tenants and sharecroppers.

### Subpart F—Violations and Compliance Provisions

1412.61 Contract violations.
1412.63 Contract or application liability.
1412.64 Inaccurate representation, misrepresentation, and scheme or device.
1412.65 Offsets and assignments.
1412.66 Acreage and production reports, prevented planting, and notice of loss.
1412.67 Compliance with highly erodible land and wetland conservation provisions.
1412.68 Controlled substance violations.
1412.69 Control of noxious weeds.

### Subpart H—CTAP

1412.81 Administration.
1412.82 Eligibility and CTAP application.
1412.83 Sharing of CTAP payments.
1412.84 Impact of CTAP application on ARC or PLC.
1412.86 CTAP payments.
1412.87 Transfer of land and succession-in-interest.
1412.88 Executed CTAP application not in conformity with regulations.
1412.89 Division of CTAP payments and provisions relating to tenants and sharecroppers.

**Authority:** 7 U.S.C. 1508b, 7911–7912, 7916, 8702, 8711–8712, 8751–8752, and 15 U.S.C. 714b and 714c.

### Subpart A—General Provisions

#### § 1412.1 Applicability, changes in law, interest, application, and contract provisions.

(a) This part specifies how base acres, generic base acres, and farm program payment yields are established or adjusted for the purpose of calculating payments for agriculture risk coverage (ARC) and price loss coverage (PLC) for covered commodities: Wheat, oats, and barley (including wheat, oats, and barley used for haying and grazing); corn; grain sorghum; long grain rice; medium grain rice; pulse crops; soybeans; other oilseeds; and peanuts. This part specifies how and when producers on a farm may make a one-time election on a farm to obtain either ARC or PLC (and if ARC, whether to receive ARC payments based on county coverage applicable on a covered commodity-by-commodity basis; or individual coverage applicable to all the covered commodities on a farm).

(b) This part specifies how upland cotton base acres that were in existence for 2013, as adjusted, are determined for the purpose of making CTAP payments in 2014 and 2015 to eligible producers.

(c) Payments otherwise provided for in this part are subject to changes made by law in rates, conditions, and eligibility notwithstanding any contract or application made under this part. However, any such modification may, as determined by CCC, allow producers the opportunity to withdraw their CTAP application or the ARC or PLC contract.

(d) If any refund is due to CCC under this part, interest will be due from the date of the CCC disbursement except as determined by CCC. The provisions of this section will apply notwithstanding any other provision of this or any other part. In order to receive payment under this part a participant is required to

comply with the regulations in this part and any additional requirements imposed by the CTAP application or ARC or PLC contract.

(e) For ARC and PLC, assistance under this part will be based on the administrative county of the farm and for CTAP, assistance under this part will be based on the physical location of the farm, as specified in part 718 of this title.

**§ 1412.2 Administration.**

(a) ARC, PLC, and CTAP are administered under the general supervision of the Executive Vice-President, CCC, and will be carried out by FSA State and county committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee may take any action required by the regulations of this part that the county committee has not taken. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will preclude the Executive Vice President, or the Deputy Administrator, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify deadlines (except deadlines specified in a law) and other requirements not specified by law, in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(1) Producers and participants have no right to a decision requesting an exception for a decision about waiving or modifying deadlines. The Deputy Administrator's refusal to consider waiver or modification cases or circumstances or a decision not to exercise this discretionary authority under this section will not be considered an adverse decision and is not appealable.

(2) CCC's decision not to consider a case under this section will not constitute a failure to act under any law or regulation because participants have no right to a waiver or modification under this section, they likewise have no right to a decision on a request for waiver or modification.

(f) A representative of CCC may execute the FSA application form titled ''Cotton Transition Assistance Program (CTAP) Application'' only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any application or contract that is not executed in accordance with such terms and conditions, including any alleged execution prior to or after the dates authorized by the Executive Vice President, CCC, is null and void and will not be considered to be an application or contract between CCC and the operator or any other producer on the farm.

**§ 1412.3 Definitions.**

The definitions in this section are applicable for all purposes of administering this part. The terms defined in part 718 of this title and part 1400 of this chapter are also applicable, except where those definitions conflict with the definitions specified in this section. Where there is a conflict or a difference in definitions specified in this part and part 718 of this title or part 1400 of this chapter, the regulations in this part will apply.

*2014 Farm Bill* means the Agricultural Act of 2014 (Pub. L. 113–79).

*Agriculture risk coverage (or ARC)* means coverage provided under subparts D and E of this part.

*Application* means the CCC-approved form used by producers to apply for CTAP under subpart H of this part.

*ARC–CO* means the Agriculture Risk Coverage elected with the county option.

*ARC–IC* means the Agriculture Risk Coverage elected with the individual option.

*Base acres* means, with respect to a covered commodity on a farm, the number of acres in effect on September 30, 2013, as defined in the regulations in 7 CFR part 1412, subpart B that were in effect on that date, subject to any reallocation, adjustment, or reduction. Unless specifically stated otherwise, the term ''base acres'' includes any generic base acres when P&CP to a covered commodity or are eligible subsequently planted crop acreage.

*Considered planted* means acreage approved as prevented planted in accordance with part 718 of this title.

*Contract or application* means the CCC-approved forms and appendixes that constitute the CTAP application or agreement for participation in ARC or PLC Program, as applicable.

*Contract period* means the compliance period specified for the contract or application for the particular program year, as designated on the contract or application. References to the ''contract'' or ''application'' period refer to the compliance period for the particular program year. The compliance period for the each program year is October 1 through September 30. For example, for the 2014 contract (and therefore for the 2014 program), the period that begins on October 1, 2013 and ends on September 30, 2014.

*Contract year or program year* means the particular year of the particular contract based on the compliance period for the contract or application. The compliance year will run from October 1 to the following September 30 and will have the same name as the corresponding fiscal year. For example, the 2014 contract or program year will be October 1, 2013, through September 30, 2014, and that year will also be considered the 2014 crop year. The same references will apply to all other years.

*County coverage* means agriculture risk coverage (ARC–CO) elected under subpart D of this part with the county option.

*Covered commodity* means wheat, oats, and barley (including wheat, oats, and barley used for haying and grazing), corn, grain sorghum, long grain rice, medium grain rice, pulse crops, soybeans, other oilseeds, and peanuts.

*Crop year* means the relevant contract or application year. For example, the 2014 crop year is the year that runs from October 1, 2013, through September 30, 2014, and references to payments for that year refer to payments made under contracts or applications with the compliance year that runs during those dates.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, or a designee.

*Developed* means:

(1) Land has been approved by the local government for uses other than commercial agricultural uses; and

(2) Construction activity has begun to install any aspect of the development, for example utilities or roadways.

*Direct payment yield for upland cotton* means the farm's upland cotton yield established as specified in the regulations for 7 CFR part 1412 that were in effect as of September 30, 2013.

*Double-cropping* means for covered commodities, notwithstanding the meaning in subparts D and E of this part for fruits and vegetables, the planting of a covered commodity for harvest in a crop year, in cycle with another covered commodity on the same acres for

harvest in the same crop year in counties that have been determined to be areas where there is determined to be substantial, successful, and long-term double cropping of the crop and where the producer has followed customary production techniques and planting deadlines as determined by CCC (that is, using techniques and deadlines used by the majority of farmers in the region to double crop the particular crops involved). In a county determined capable of supporting such double-cropping of the covered commodities, as determined by CCC, both an initial crop and a subsequent crop will be considered planted or prevented planted acres for the purpose of this part. Notwithstanding any of the provisions of 7 CFR part 718, in those instances where the subsequently planted or approved prevented planted covered commodity cannot be recognized as double-cropped acreage under this definition, the subsequently planted crop acreage will not be considered planted or prevented planted.

*Dry peas* means Austrian, wrinkled seed, yellow, Umatilla, and green peas, excluding peas grown for the fresh, canning, or frozen market.

*Eligible subsequently planted crop acreage* means planted acres of a covered commodity that are a replacement crop to any crop other than a covered commodity. Eligible subsequently planted crop acreage is included as payment acres if the crop acreage is planted to a covered commodity as a replacement crop after the failure or prevented planting of any crop other than a covered commodity. Eligible subsequently planted crop acreage is used to determine payment acres and attribution of generic base acres under this part.

*Extra long staple cotton* means cotton that is other than upland cotton and both the following:

(1) Produced from pure strain varieties of the Barbadense species or any hybrid of the species, or other similar types of extra long staple cotton, designated by the Secretary, having characteristics needed for various end uses for which United States upland cotton is not suitable and grown in irrigated cotton-growing regions of the United States designated by the Secretary or other areas designated by the Secretary as suitable for the production of the varieties or types; and

(2) Ginned on a roller-type gin or, if authorized by the Secretary, ginned on another type of gin for experimental purposes.

*Fiscal year* means the year running from October 1 to the following September 30 and will be designated by the same calendar year in which it ends. For example, the 2014 fiscal year begins on October 1, 2013 and ends on September 30, 2014.

*Generic base acres* means the number of base acres for upland cotton in effect on September 30, 2013, as defined in the regulations in 7 CFR part 1412, subpart B that were in effect on that date, subject to any adjustment or reduction under this part. Generic base acres are always the same amount as upland cotton base acres. Any adjustment in generic base acres on a farm will necessarily result in an adjustment in upland cotton base acres on the farm.

*Harvested* means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in or on a truck or other conveyance or is consumed by livestock through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay, are considered harvested when in the bale, whether removed from the field or not.

*Individual coverage* means ARC (ARC–IC) elected under subpart D of this part with the individual option.

*Initial crop* means acreage of a covered commodity or cotton planted or approved as prevented planted for harvest as peanuts, grain, or lint. The initial crop includes reseeded or replanted crop acreage.

*Medium grain rice* means medium grain rice and includes short grain rice and temperate japonica rice.

*Other oilseed* means a crop of sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, or any oilseed designated by the Secretary.

*Payment acres* mean:

(1) For the purpose of ARC–CO and PLC, subject to planting flexibility provisions as specified § 1412.46, the payment acres for each covered commodity on a farm will be equal to 85 percent of the base acres for the covered commodity on the farm.

(2) For the purpose of ARC–IC, subject to planting flexibility provisions as specified in § 1412.46, the payment acres for a farm will be equal to 65 percent of the base acres for all of the covered commodities on the farm.

(3) For the purpose of CTAP under subpart H of this part, the payment acres for a farm are the base acres of upland cotton in effect on a farm on September 30, 2013, subject to any adjustment or reduction under this part.

*Payment yield* means for a farm for—

(1) A covered commodity, the yield established under subpart C of this part; and

(2) Upland cotton, the direct payment yield for upland cotton for the farm as of September 30, 2013.

*Planted and considered planted (P&CP)* means, with respect to an acreage amount, the sum of the planted and prevented planted acres approved by the FSA county committee on the farm for a crop. For the purposes of this part, P&CP is limited to initially planted or prevented planted crop acreage, except for crops planted in an approved double-cropping sequence. Eligible subsequently planted crop acreage, replacement crop acreage, and subsequently planted crop acreage are each not included as P&CP.

*Price Loss Coverage (or PLC)* means coverage provided under subpart D of this part.

*Pulse crop* means dry peas, lentils, small chickpeas, and large chickpeas.

*Reference price* means, with respect to a covered commodity for a crop year, the following for:

(1) Wheat, $5.50 per bushel;

(2) Corn, $3.70 per bushel;

(3) Grain sorghum, $3.95 per bushel;

(4) Barley, $4.95 per bushel;

(5) Oats, $2.40 per bushel;

(6) Long grain rice, $14.00 per hundredweight;

(7) Medium grain rice, $14.00 per hundredweight;

(8) Soybeans, $8.40 per bushel;

(9) Other oilseeds, $20.15 per hundredweight;

(10) Peanuts, $535.00 per ton;

(11) Dry peas, $11.00 per hundredweight;

(12) Lentils, $19.97 per hundredweight;

(13) Small chickpeas, $19.04 per hundredweight; and

(14) Large chickpeas, $21.54 per hundredweight.

*Replacement crop* means the planting or approved prevented planting of any crop for harvest following the failure of planted crop acreage or prevented planted acreage of a covered commodity not in a recognized double-cropping sequence (as specified in this section). Replacement crops cannot generate payments under this part unless the replacement crop acreage meets the definition of eligible subsequently planted crop acreage as specified in this section.

*Reseeded or replanted crop* means the second planting of a covered commodity on the same acreage after the first planting of that same crop has failed.

*STAX* means Stacked Income Protection Plan, as specified in 7 U.S.C. 1508b. A list of counties having farms

with upland cotton base acres for which STAX will not be made available in 2015 will be available upon request from FSA.

*Subsequently planted crop acreage* means planted acres of a covered commodity following an initial P&CP covered commodity. Subsequently planted crop acreage can be used for base reallocation for ARC and PLC under subpart B.

*Supportive and necessary contractual documents* mean those documents including, but not limited to, those items substantiating the ARC or PLC contract or CTAP application such as leases, deeds, signatures of contract participants, owners, operators, and other tenant signatures, as determined by CCC.

*Temperate japonica rice* means rice that is grown in high altitudes or temperate regions of high latitudes with cooler climate conditions, in the Western United States, as determined by CCC, for the purpose of the—

(1) Reallocation of base acres under subpart B of this part;

(2) Establishment of a reference price of 115 percent times the established reference price of medium grain rice and determining temperate japonica rice's own effective price; and

(3) Determination of the actual crop revenue and ARC guarantee under subparts D and E of this part.

*Upland cotton* means cotton that is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate. In other words, it means any cotton that is not extra long staple cotton.

**§ 1412.4 Appeals.**

A participant may seek reconsideration and review of any individual program eligibility adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

**Subpart B—Establishment of Base Acres for a Farm for Covered Commodities**

**§ 1412.23 Base acres, generic base acres, and Conservation Reserve Program.**

(a) Subject to paragraphs (b) and (c) of this section, CCC will annually adjust the base acres for covered commodities and generic base acres with respect to the farm by the number of production flexibility contract acres or base acres protected by a Conservation Reserve Program (CRP) contract that expired, was voluntarily terminated, or was early released.

(b) The total base acres and generic base acres on a farm cannot exceed the limitation specified in § 1412.24.

(c) Adjustments to (not reallocation of) base acres and generic base acres on a farm in accordance with this section are to be completed by no later than August 1 or other date as determined and announced by the CRP contract expired or was voluntarily terminated.

(d) For the fiscal year in which an adjustment to base acres under this section is made, the producer of the farm may elect to receive ARC or PLC payments, in accordance with any ARC and PLC election made under section 1115 of the 2014 Farm Bill with respect to the base acres added to the farm under this section, or a prorated payment under the CRP contract, but not both. For any farm that had all of its base acres reduced for participation in CRP, if the farm had no base acres or election in effect before an adjustment is made to put base acres of a covered commodity back on the farm, the owners of that farm will have an opportunity to reallocate base acres and the producers will have an opportunity to elect ARC or PLC within 30 days of being notified of the establishment of base acres on that farm before producers enroll base acres on that farm.

**§ 1412.24 Limitation of total base acres and generic base acres on a farm.**

(a) The sum of the following cannot exceed the total cropland acreage on the farm, plus approved double-cropped acreage for the farm:

(1) The sum of all base acres and generic base acres (which are equal to upland cotton base acres used for CTAP) established for the farm in accordance with this part; plus

(2) Any cropland acreage on the farm enrolled in a CRP contract in accordance with part 1410 of this chapter; plus

(3) Any cropland acreage on the farm enrolled in a wetland reserve program contract in accordance with part 1467 of this chapter; plus

(4) Any other acreage on the farm enrolled in a Federal conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.

(b) The Deputy Administrator will give the owner of the farm the opportunity to select the base acres or generic base acres (which are equal to upland cotton base acres used for CTAP) against which any reduction required in this section will be made. Absent the owner selecting the base acre or generic base acre for reduction, CCC will apply a pro-rata reduction against the base acres or generic base acres before computing and issuing any payments for the program year when a reduction becomes necessary. If a reduction is made to generic base acres on a farm, a corresponding equal reduction is made to upland cotton base acres.

(c) In applying paragraph (a) of this section, CCC will take into account the practice of double cropping on a farm, as determined by CCC.

(d) For base acre reductions:

(1) Subject to the limitation in paragraph (d)(2) of this section, a permanent reduction of all or a portion of a farm's base acres, including generic base acres (and the equal amount of upland cotton base acres), will be allowed when all owners of the farm execute and submit a written request for such reduction, on a CCC-approved standard, uniform form designated by CCC, to the FSA county office where the records for the farm are administratively maintained.

(2) A permanent reduction of all or a portion of a farm's base acres to negate or reduce a program violation is not allowed.

(e) When base acres on a farm are converted to a non-agricultural commercial or industrial use, the total base acres on the farm will be reduced accordingly regardless of the submission of a request for such reduction.

(f) The base acres and generic base acres (resulting in an equal amount of upland cotton base acres) on a farm will be proportionately reduced when it is determined that the land has been subdivided and developed for multiple residential units or other nonfarming uses if, in the judgment of the county committee, the size of the tracts and the density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless either of the following applies:

(1) The producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use and such land has not been divided from the farm with a farm reconstitution performed according to part 718 of this title; or

(2) A properly constituted or reconstituted farm contains sufficient land that has not yet been subdivided and developed for multiple residential units or other nonfarming uses, and the producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use.

## Subpart D—ARC and PLC Contract Terms and Enrollment Provisions for Covered Commodities

### § 1412.44 Notification of base acres.

Prior to enrolling the farm in the 2014 ARC or PLC program, the operator and each owner of record of a farm will be notified in writing of the number of base acres eligible for enrollment in a contract, unless such operator or owner of record of a farm requests in writing not to be furnished with the notice. The operator and each owner of record are responsible for notifying all other producers of a farm of the notice.

### § 1412.45 Treatment of generic base acres.

(a) ARC and PLC payments will only be made with respect to generic base acres P&CP to a covered commodity or eligible subsequently planted crop acreage for the crop year on a farm.

(b) Generic base acres on a farm will be attributed to a covered commodity as follows:

(1) If a single covered commodity is P&CP or eligible subsequently planted crop acreage and the total P&CP or eligible subsequently planted crop acreage exceeds the generic base acres on the farm, the generic base acres are attributed to that covered commodity in an amount equal to the total number of generic base acres on the farm.

(2) If multiple covered commodities are P&CP or eligible subsequently planted crop acreage and the total number of acres P&CP or eligible subsequently planted crop acreage to all covered commodities on the farm exceeds the generic base acres on the farm, the generic base acres will be attributed to each of the covered commodities on the farm on a pro rata basis to reflect the ratio of:

(i) The P&CP and eligible subsequently planted crop acreage to a covered commodity on the farm; to

(ii) The total P&CP and eligible subsequently planted crop acreage to all covered commodities on the farm.

(3) If the total number of P&CP and eligible subsequently planted crop acreage to all covered commodities on the farm does not exceed the generic base acres on the farm, the number of P&CP and eligible subsequently planted crop acreage to a covered commodity is attributed to that covered commodity.

(c) When generic base acres are P&CP or eligible subsequently planted crop acreage to a covered commodity or when P&CP or eligible subsequently planted crop acreage to a covered commodity is attributed to generic base acres, the generic base acres are in addition to other base acres on the farm.

### § 1412.46 Planting flexibility.

(a) Any crop may be planted and harvested on base acres on a farm, except as limited in this section. Any crop may be planted on cropland in excess of the base acres on a farm.

(b) Base acres may be hayed or grazed at any time.

(c) Except as specified in paragraph (d) of this section, the planting or harvesting of perennial or harvesting of non-perennial fruits, vegetables (except mung beans and covered commodities), or wild rice, as determined by CCC, will result in an acre for acre payment reduction when such crop or crops are planted and or harvested, as applicable, on more than:

(1) 15 percent of the base acres of a farm enrolled in ARC or PLC using county coverage; or

(2) 35 percent of a farm enrolled in ARC using individual coverage.

(d) Notwithstanding the provisions of paragraph (c) of this section, perennial fruits, vegetables, and wild rice may be planted or harvested on base acres of a farm and non-perennial fruits, vegetables, and wild rice may be harvested on base acres of a farm if a producer double-crops fruits, vegetables, or wild rice with a covered commodity in any region described in paragraph (e) of this section, in which case payment acres will not be reduced for the planting or harvesting of the fruit, vegetable, or wild rice.

(e) Double-cropping for purposes of this section means planting for harvest non-perennial fruits, vegetables, or wild rice on the same acres in cycle with a planted covered commodity harvested for grain in a 12-month period under normal growing conditions for the region and being able to repeat the same cycle in the following 12-month period. For purposes of this part, the following counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice. State committees have established the following counties as regions within their respective States:

**Alabama**

Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Houston, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

**Alaska**

None.

**Arizona**

Cochise, Graham, Greenlee, LaPaz, Maricopa, Mohave, Pima, Pinal, and Yuma.

**Arkansas**

Ashley, Benton, Clay, Craighead, Crawford, Crittenden, Cross, Faulkner, Franklin, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Logan, Lonoke, Mississippi, Monroe, Phillips, Pulaski, St. Francis, Sebastian, Washington, Woodruff, and Yell.

**California**

Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

**Caribbean Office**

None.

**Colorado**

Otero.

**Connecticut**

None.

**Delaware**

All counties.

**Florida**

All counties except Monroe.

**Georgia**

All counties.

**Hawaii**

None.

**Idaho**

None.

**Illinois**

Bureau, Calhoun, Cass, Clark, Crawford, DeKalb, Edgar, Effingham, Gallatin, Iroquois, Jersey, Kankakee, Lawrence, LaSalle, Lee, Madison, Marion, Mason, Monroe, Randolph, St. Clair, Tazewell, Union, Vermilion, White, and Whiteside.

**Indiana**

Allen, Bartholemew, Daviess, Gibson, Jackson, Johnson, Knox, LaGrange, LaPorte, Madison, Marion, Martin, Miami, Posey, Ripley, Shelby, Sullivan, Vandenberg, and Warrick.

**Iowa**

Kossuth, Mitchell, Palo Alto, and Winnebago.

**Kansas**

None.

**Kentucky**

All counties.

**Louisiana**

Avoyelles, Franklin, Grant, Morehouse, Rapides, Richland, and West Carroll.

**Maine**

None.

**Maryland**

Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester.

**Massachusetts**

None.

**Michigan**

St. Joseph and Kalamazoo.

**Minnesota**

Blue Earth, Brown, Carver, Chippewa, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower, Nicollet, Olmsted, Pope, Redwood, Renville, Rice, Scott, Sibley, Stearns, Steele, Swift, Waseca, Wabasha, Watonwan, and Winona.

**Mississippi**

All counties.

**Missouri**

Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Pemiscot, Perry, Ripley, Scott, and Stoddard.

**Montana**

None.

**Nebraska**

None.

**Nevada**

None.

**New Hampshire**

None.

**New Jersey**

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.

**New Mexico**

Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

**New York**

Cayuga, Columbia, Dutchess, Erie, Genesee, Greene, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Putnam, Rensselaer, Saratoga, Schoharie, Seneca, Steuben, Suffolk, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates.

**North Carolina**

Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Martin, McDowell, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Tyrell, Union, Vance, Wake, Warren, Washington, Wayne, Wilkes, Wilson, and Yadkin.

**North Dakota**

None.

**Ohio**

Carroll, Champaign, Clermont, Fulton, Henry, Jackson, Lucas, Miami, Morgan, Muskingum, Scioto, Stark, Tuscarawas, and Vinton.

**Oklahoma**

Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cleveland, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, LeFlore, Logan, Love, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.

**Oregon**

Morrow and Umatilla.

**Pennsylvania**

Adams, Bucks, Centre, Chester, Clinton, Columbia, Cumberland, Delaware, Erie, Franklin, Indiana, Lancaster, Montgomery, Montour, Northumberland, Schuylkill, Synder, Union, and York.

**Puerto Rico**

None.

**Rhode Island**

None.

**South Carolina**

All counties.

**South Dakota**

None.

**Tennessee**

Bledsoe, Cannon, Chester, Cocke, Coffee, Crockett, Dickson, Dyer, Fayette, Gibson, Giles, Greene, Grundy, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lawrence, Lincoln, Madison, Marion, Maury, McNairy, Obion, Overton, Pickett, Putnam, Rhea, Robertson, Rutherford, Sequatchie, Shelby, Sumner, Tipton, Unicoi, VanBuren, Warren, Washington, Wayne, White, Williamson, and Wilson.

**Texas**

Andrews, Atascosa, Austin, Bailey, Bexar, Brazoria, Briscoe, Brooks, Cameron, Castro, Chambers, Childress, Clay, Cochran, Collingsworth, Comanche, Crosby, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Duval, Fannin, Floyd, Foard, Frio, Gaines, Hale, Hall, Hansford, Hardeman, Hardin, Hartley, Haskell, Hemphill, Hidalgo, Hockley, Howard, Jefferson, Jim Hogg, Jim Wells, Kent, Kinney, Kleberg, Knox, Lamb, LaSalle, Liberty, Lubbock, Lynn, Martin, Maverick, Medina, Midland, Moore, Motley, Nueces, Ochiltree, Parmer, Pecos, Randall, Reeves, San Patricio, Sherman, Starr, Swisher, Terry, Uvalde, Washington, Webb, Wheeler, Willacy, Wilson, Yoakum, Zapata, and Zavala.

**Utah**

None.

**Vermont**

None.

**Virginia**

Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesapeake, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene,

Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Suffolk, Surry, Sussex, Tazewell, Virginia Beach, Warren, Washington, Westmoreland, Wise, Wythe, and York.

**Washington**

Yakima.

**West Virginia**

None.

**Wisconsin**

Adams, Calumet, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Trempealeau, Walworth, Washington, Waukesha, Waushara, and Winnebago.

**Wyoming**

None.

(f) The acreage of any fruit or vegetable specified in paragraph (h) of this section will first be attributed to cropland not having base acres, followed by base acres, before applying any payment acreage reduction required by paragraph (c) of this section. The reduction will be attributed to each of the covered commodities on the farm having payment acres on a pro rata basis to reflect the ratio of the payment acres of the covered commodity on the farm to the total payment acres of all covered commodities on the farm. No reductions are applicable to CTAP payments as specified in subpart H of this part.

(g) For the purposes of this part, fruits, vegetables, and wild rice planted on payment acres of a farm under ARC or PLC Program contract:

(1) Will be considered harvested at the time of planting, unless the producer pays a fee to cover the cost of a farm visit, as specified in part 718 of this title, to verify that the fruit, vegetable, or wild rice has been destroyed before harvest, as determined by CCC, or

(2) Will not be considered as planted to a fruit, vegetable, or wild rice when reported by a producer on the farm with an intended use of green manure or forage, as determined by CCC, and a fee to cover the cost of a farm visit is paid by the producer, as specified in part 718 of this title, to verify that the crop has not been harvested.

(h) Unless otherwise specifically included as a covered commodity as specified in this part, fruits and vegetables include, but are not limited to, all nuts except peanuts, certain fruit-bearing trees and: Acerola (barbados cherry), antidesma, apples, apricots, aragula, ariona (chokeberry), artichokes, asparagus, atemoya (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok spare choy, boysenberries, breadfruit, broccoflower, broccolo-cavalo, broccoli, brussel sprouts, cabbage, cailang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dasheen, dates, dry edible beans, dunga, eggplant, elderberries, elut, endive, escarole, etou, feijoas, figs, gai lien, gailon, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mar bub, melongene, mesple, mizuna, mongosteen, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radicchio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recao, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, and yam yu choy.

**§ 1412.49 Matters of general applicability.**

(a) The regulations in this part and CCC's interpretation of the regulations in this part and internal agency directives issued to FSA State and county offices are matters of general applicability and are not individually appealable in administrative appeals according to §§ 11.3 and 780.5 of this title. Additionally, the regulations in this part and any decisions of CCC and FSA that are not based on specific facts derived from an individual participant's application, contract, or file are not appealable under part 11 or part 780 of this title. Examples of such decisions include how the program is generally administered, signup deadlines, payment rates, or any other generally applicable matter or determination that is made by CCC or FSA for use in all similarly situated applications. The only extent by which the matters referenced in this section are reviewable administratively in an appeal forum is whether FSA's or CCC's decision to apply the generally applicable matter is factually accurate and in conformance with the regulations in this part.

(b) The relief provisions of 7 CFR part 718 are applicable only to ineligibility and noncompliance decisions. The relief provisions cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with every eligibility or compliance requirement of the provisions of this part. Equitable relief provisions of part 718 of this title cannot be used to obtain a review of either these regulations, the requirements of this part, the agency's interpretations of this part, or compliance provisions of this part.

**Subpart E—Financial Considerations Including Sharing Payments**

**§ 1412.51 Limitation of payments.**

(a) The provisions of part 1400 of this chapter apply to this part. Payments under this part cannot exceed the amounts specified in part 1400 of this chapter.

(b) No person or legal entity may receive, directly or indirectly, more than $40,000 in CTAP payments in each of the 2014 and 2015 crop years.

(c) For all covered commodities other than peanuts, the total amount of ARC and PLC payments received, directly or indirectly, by a person or legal entity (except a joint venture or general partnership) for any crop year together

with any marketing loan gains or loan deficiency payments for any and all commodities other than peanuts under subtitle B of title I of the 2014 Farm Bill cannot exceed $125,000.

(d) For peanuts, the total amount of payments received, directly or indirectly, by a person or legal entity (except a joint venture or general partnership) for any crop year together with any marketing loan gains or loan deficiency payments under subtitle B of title I of the 2014 Farm Bill for peanuts cannot exceed $125,000.

**§ 1412.54 Sharing of payments.**

(a) Each eligible producer on a farm may apply for CTAP as specified in subpart H of this part and annually enroll in an ARC or PLC contract, as applicable, and receive assistance and payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

(b) Each person or legal entity leasing a farm who applies for CTAP or elects and enrolls in ARC or PLC is required to provide a copy of their written lease to the county committee and, in the absence of a written lease, is required to provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease. An owner's or landlord's signature affirming a zero share on either an application for assistance or contract under this part, as applicable, may be accepted as evidence of a cash lease between the owner or landlord and tenant, as determined by CCC. For the purposes of obtaining payments under this part, the signature or signatures, if entered on the application or contract to satisfy the requirement of furnishing a written lease, are required to be provided by the application or enrollment deadline established by CCC for the assistance or payment.

(c) When land on which base acres is leased on a share basis, neither the landlord nor the tenant is eligible to receive 100 percent of the CTAP payment or ARC or PLC contract payment for the farm.

(d) CCC will approve an ARC or PLC contract for enrollment and approve the division of payment when CCC is satisfied and determines that all of the following apply:

(1) The landlords, tenants, and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) The interests of tenants and sharecroppers are being protected; and

(3) The payment shares shown on the application or contract do not circumvent either the provisions of this part or the provisions of part 1400 of this chapter.

(4) If any civil dispute between persons, legal entities, or members of legal entities not involving CCC is known or suspected to exist that CCC believes might impact the eligibility of any person or legal entity or administration of ARC, PLC, or CTAP under this part, the Deputy Administrator on CCC's behalf can elect to withhold making any determination on an application or contract until such time as the Deputy Administrator and CCC are satisfied that the dispute is resolved or no longer has any bearing on either the administration of ARC, PLC, or CTAP under this part or any eligible producer or potential eligible producer. A decision withheld under to this paragraph will not be construed to be a decision or adverse decision under any law or regulation nor will it be construed to be a failure of FSA or CCC to act under any law or regulation.

(e) A lease will be considered to be a cash lease if the lease provides for only a guaranteed cash payment for a specified amount, or a fixed quantity of the crop (for example, pounds, or bushels per acre).

(1) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, the agreement will be considered to be a share lease.

(2) If a lease provides for a guaranteed amount and a share of the crop or crop proceeds, the agreement will be considered a cash lease.

(3) If the lease is a cash lease, the landlord is not eligible for assistance or payments under this part. The leasing of grazing or haying privileges is not considered cash leasing.

(f) Shares of P&CP or eligible subsequently planted crop acreage of covered commodities on generic base acres will be determined based on the attribution in § 1412.45 and shares recorded on the report of acreage filed in accordance with § 1412.66. Shares of PLC and ARC–CO will be determined based on the shares entered on the contract. Shares of ARC–IC payments will be determined based on the shares recorded on the report of acreage filed as specified in § 1412.66. Further, each eligible producer having a share of P&CP or eligible subsequently planted crop acreage of covered commodities on a farm enrolled under an ARC or PLC Program contract has to do both of the following to be eligible for their share of a payment:

(1) Unless otherwise already enrolled on the ARC or PLC Program contract, sign the ARC or PLC Program contract during the contract period; and

(2) Have the producer's share recorded on the report of acreage filed as required by part 718 of this title and § 1412.66 of this part.

(g) In a case where a producer has failed to sign an ARC or PLC Program contract by the signup deadline or contract period established for enrollment and participation for the producer's reported share of P&CP acres or eligible subsequently planted crop acreage of covered commodities on a farm enrolled as specified in this part, that producer's share will not receive any consideration for payment and will not generate any payment to the producer or to any other producer on the farm.

(h) CCC's approval of a CTAP application or ARC or PLC contract or shares under this part based on the representations of persons or legal entities signing the CTAP application, or ARC or PLC contract, or acreage report in no way implies or will be construed as CCC's determination that the representations or assertions made by persons or legal entities signing the CTAP application, or ARC or PLC contract, or acreage report are correct or are approved as legitimate. Any and all assertions and representations of a person, persons, legal entity, or legal entities signing forms, applications, or contracts incidental to program participation in this part are always subject to review and scrutiny or spot check by CCC. CCC can at any time demand documentation to substantiate any representation made by any program participant under this part and recover unearned amounts that are determined to have been paid based on such erroneous representation.

**§ 1412.55 Provisions relating to tenants and sharecroppers.**

(a) No payment or assistance authorized under this part will be made by CCC if:

(1) The landlord or operator has adopted a scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under ARC, PLC, or CTAP. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine are required to be refunded to CCC; or

(2) The landlord terminated a lease in violation of State law as determined by a State court.

(b) [Reserved]

**Subpart F—Violations and Compliance Provisions**

**§ 1412.61 Contract violations.**

Violations of contract or application requirements will result in the termination or cancellation of the ARC or PLC contract or CTAP application, as applicable. Upon such termination or cancellation, all producers that signed the contract or application forfeit all rights to receive payments for the ARC or PLC contract or CTAP application and are required to refund all payments received, plus interest as specified in § 1412.1(d) of this part, as determined in accordance with part 1403 of this chapter.

**§ 1412.63 Contract or application liability.**

All producers who signed an ARC or PLC Program contract or CTAP application made according to this part are jointly and severally liable for contract or application violations and resulting repayments and penalties.

**§ 1412.64 Inaccurate representation, misrepresentation, and scheme or device.**

(a) Producers are required to accurately report and certify information provided to CCC for ARC, PLC, and CTAP. Any form containing the signature of a person or legal entity that contains a preprinted certification statement on the form will be construed to be a representation and certification of and from the person or legal entity signing the form regardless of whether or not the person or legal entity personally made the entry or entries on the form. Errors in reporting may impact eligibility or extent of eligibility. Payments under this part will be based on the most correct information available. CCC's issuing payments based on the face of a contract or application does not signify CCC's approval of the representations made by participants. Producers are responsible for refunding, with interest as specified in § 1412.1(d) of this part, any program benefits that were paid based on incorrect program information.

(b) For those cases in which FSA determines that an inaccurate representation or certification is due to a misrepresentation, scheme, or device, the person or legal entity or members of the legal entity will be ineligible to receive ARC, PLC, or CTAP payments and will have the person, legal entity's or member's interest in all contracts or applications terminated if it is determined that such person, legal entity, or member of the legal entity has done any of the following:

(1) Adopted any scheme or device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation;

(3) Misrepresented any fact affecting an ARC or PLC Program contract, CTAP application, or determination made under part 1400 of this chapter; or

(4) Violated or been determined ineligible under § 1400.5 of this chapter.

(c) Any remedies taken by FSA or CCC as specified in this section will be in addition to any other civil or other remedies that may be available, including, but not limited to, those provided in part 1400 of this chapter.

**§ 1412.65 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 1403 of this chapter apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

**§ 1412.66 Acreage and production reports, prevented planting, and notices of loss.**

(a) An accurate report of all cropland acreage on the farm is required for ARC, PLC, and CTAP. How to submit the acreage report is specified in part 718 of this title.

(b) Prevented planting acreage credit will only be available to acreage that CCC determines was prevented from being planted due to an eligible cause of loss. Acreage ineligible for prevented planted credit includes acreage not planted due to a management decision. Prevented planting acreage credit is subject to the provisions of part 718 of this title.

**§ 1412.67 Compliance with highly erodible land and wetland conservation provisions.**

The provisions of part 12 of this title apply to this part.

**§ 1412.68 Controlled substance violations.**

The provisions of part 718 of this title apply to this part.

**§ 1412.69 Control of noxious weeds.**

CTAP participants and enrolled ARC and PLC contract participants agree to effectively control noxious weeds and otherwise maintain the land on the farm in accordance with sound agricultural practices; and use the land on the farm for an agricultural or conserving use, and not for a nonagricultural commercial, industrial, or residential use.

**Subpart H—CTAP**

**§ 1412.81 Administration.**

(a) The provisions of this part apply to this subpart, except for provisions that apply specifically to ARC and PLC only, for example, the yield and planting flexibility provisions apply specifically to ARC and PLC. To the extent that there is a conflict with the provisions of other subparts of this part and this subpart, the provisions of this subpart apply to CTAP.

(b) CTAP payments as specified in this subpart will be made available for:

(1) The 2014 crop year to eligible producers on farms in all counties; and

(2) The 2015 crop year to eligible producers on farms only in counties where STAX is not available.

**§ 1412.82 Eligibility and CTAP application.**

(a) *Eligibility.* In addition to any general eligibility provisions in this part, to be eligible for CTAP the following conditions are required:

(1) The producer is a person or legal entity who is actively engaged in farming and otherwise eligible for payment, as specified in 7 CFR part 1400;

(2) The producer is on a farm that has cotton base acres that were in existence as of September 30, 2013, as adjusted; and

(3) The producer has an interest in the upland cotton base acres on the farm.

(b) *Producer's share interest.* A producer's share interest in cropland on a farm must be equal to or greater than that producer's share interest in cotton base acres on the farm for that crop year, as reported on that farm's acreage report.

(c) *Application.* To apply, submit the application and supportive and necessary contractual documents to the FSA county office:

(1) For 2014 CTAP by October 7, 2014; and

(2) For 2015 CTAP, by July 31, 2015.

**§ 1412.83 Sharing of CTAP payments.**

(a) Each eligible producer on a farm may apply for and receive CTAP payments determined to be fair and equitable as agreed to by all producers on the farm and as approved by the county committee.

(b) The provisions of § 1412.54 regarding the classification of leases apply to CTAP.

(c) Shares of CTAP payments will be determined based on shares recorded on

the application for CTAP payments for the particular program year. The provisions of § 1412.54 apply to shares of CTAP payments.

**§ 1412.84 Impact of CTAP application on ARC or PLC.**

(a) Applications for CTAP do not establish eligibility for ARC or PLC. Interested producers are required to file documents that are specifically required for CTAP as specified on the CTAP application. An application for CTAP will not be considered an intent to participate in ARC or PLC and, conversely, an election or enrollment in ARC or PLC will not establish eligibility for CTAP.

(b) [Reserved]

**§ 1412.86 CTAP payments.**

(a) In the case of producers on a farm who apply for CTAP as specified in this part, and where all other eligibility provisions have been satisfied, CCC will make CTAP payments available to the producers on a farm's application as specified in this subpart.

(b) CTAP payments for upland cotton producers on farms with eligible upland cotton base acres as specified in § 1412.82(a) are equal to:

(1) For 2014, the product of multiplying 60 percent of the farm's upland cotton base acres, times the farm's direct payment yield for upland cotton, times $0.09, times the producer's share on the approved application; or

(2) Where applicable for 2015 according to this part and subpart, the product of multiplying 36.5 percent of the farm's upland cotton base acres, times the farm's direct payment yield for upland cotton, times $0.09, times the producer's share on the approved application.

**§ 1412.87 Transfer of land and succession-in-interest.**

(a) A succession in interest application for CTAP is required if there has been a change in the producer shares of upland cotton base acres in § 1412.82(a) for 2014 or 2015, as applicable, due to:

(1) A sale of land;

(2) A change of producer, including a change in a partnership that increases or decreases the number of partners or changes who are partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in producer shares to reflect changes in the producer's share of the upland cotton base acres relevant to the originally approved application; or

(5) Any other change determined by the Deputy Administrator to be a succession that will not adversely affect or defeat the purpose of CTAP.

(b) A succession in interest to the CTAP application is not permitted if CCC determines that the change:

(1) Results in a violation of the landlord-tenant provisions specified in § 1412.55; or

(2) Adversely affects or otherwise defeats the purpose of CTAP.

(c) If a producer who is entitled to receive CTAP payments dies, becomes incompetent, or is otherwise unable to receive the payment, CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner of an enrolled farm is required to inform the county committee of changes in interest in base acres of upland cotton as specified in § 1412.82(b) on the farm not later than:

(1) August 1 of the fiscal year in which the change occurs if the change requires a reconstitution be completed in accordance with part 718 of this title; or

(2) September 30 of the fiscal year in which the change occurs if the change does not require a reconstitution be completed in accordance with part 718 of this title.

(e) In any case in which a CTAP payment has previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor.

**§ 1412.88 Executed application not in conformity with regulations.**

If, after a CTAP application is approved by CCC, it is discovered that such any information contained in the application is not in conformity with the provisions of this part, the provisions of this part will prevail.

**§ 1412.89 Division of CTAP payments and provisions relating to tenants and sharecroppers.**

(a) CTAP payments will be divided in the manner specified in the applicable application approved by CCC. CCC will ensure that 2014 or 2015 producers who would have a 2014 or 2015 reported share interest in cropland on the farm specified in § 1412.82(b) receive treatment that CCC deems to be equitable, as determined by CCC. CCC will refrain from acting on an application if, as determined by CCC, there is a disagreement among any person or legal entity applying as to the person's or legal entity's eligibility to apply as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have a reported share interest in the cropland on the farm sufficient to cover the claimed share interest in cotton base acres of that farm as specified in § 1412.82(b) in 2014 or 2015, as applicable.

(b) CCC may remove an operator or tenant from an application under this subpart and part when the operator or tenant:

(1) Requests, in writing to be removed from the application;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the application, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the 2014 or 2015 program year and the Administrator of the estate fails to succeed to the application within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the application under this part and subpart of the operator or tenant and such order is received by FSA, as determined by CCC.

(c) In addition to the provisions in paragraph (b) of this section, tenants are required to maintain their tenancy throughout the crop year in order to remain on an application. Tenants who fail to maintain tenancy on the acreage under the application, including failure to comply with provisions under applicable State law, may be removed from an application by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a participant specified in the application.

Signed on August 4, 2014.

**Juan M. Garcia,**

*Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.*

[FR Doc. 2014–18719 Filed 8–6–14; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## 19 CFR PART 101

**[CBP Dec. 14–09]**

## Technical Amendment to the List of CBP Preclearance Offices in Foreign Countries: Addition of Abu Dhabi, United Arab Emirates

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This rule amends U.S. Customs and Border Protection (CBP) regulations to reflect that CBP has added a preclearance location in Abu Dhabi, United Arab Emirates. CBP Preclearance operations in Abu Dhabi, United Arab Emirates officially began on January 24, 2014, pursuant to an agreement between the Governments of the United States and the United Arab Emirates. CBP Officers at preclearance locations conduct inspections and examinations to ensure compliance with U.S. customs, immigration, and agriculture laws, as well as other laws enforced by CBP at the U.S. border. Such inspections and examinations prior to arrival in the United States generally enable travelers to exit the domestic terminal or connect directly to a U.S. domestic flight without undergoing further CBP processing.

**DATES:** *Effective Date:* August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Dylan DeFrancisci, Office of Field Operations, 202–344–3671, *dylan.defrancisci@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Preclearance Operations*

CBP preclearance operations have been in existence since 1952. Preclearance facilities are established through the cooperative efforts of CBP, foreign government representatives, and the local facility authorities and are evidenced with signed preclearance agreements.

Each facility is staffed with CBP Officers responsible for conducting inspections and examinations in connection with preclearing passengers, crew, and their goods bound for the United States. Generally, travelers who are inspected at a preclearance facility are permitted to arrive at a U.S. domestic facility and exit the U.S. domestic terminal upon arrival or connect directly to a U.S. domestic flight without further CBP processing.

Preclearance operations enhance security in the air environment through the screening and inspection of travelers prior to their arrival in the United States. Additionally, preclearance operations facilitate legitimate travel and relieve passenger congestion at federal inspection facilities in the United States. In Fiscal Year (FY) 2013, over 16 million aircraft travelers were processed at preclearance locations. This figure represents more than 15.5 percent of all commercial aircraft travelers cleared by CBP in FY 2013.

### *B. Abu Dhabi, United Arab Emirates Preclearance Operations*

An ''Agreement Between the Government of the United States of America and the Government of the United Arab Emirates on Air Transport Preclearance'' (Agreement) was signed on April 15, 2013. Among other things, the Agreement sets forth the obligations of the United Arab Emirates and the United States and establishes the Abu Dhabi International Airport as a preclearance location. Under the Agreement, flights eligible for preclearance are non-stop commercial flights that are destined from the United Arab Emirates to the United States. The Agreement provides that it will be carried out in a manner consistent with the laws and constitutions of both governments. Preclearance operations officially began in Abu Dhabi, United Arab Emirates on January 24, 2014.

### *C. Regulatory Amendment*

Section 101.5 of the CBP regulations (19 CFR 101.5) sets forth a list of CBP preclearance offices in foreign countries. This document amends this section to add Abu Dhabi, United Arab Emirates to the list of preclearance offices. This document also corrects the misspelling of the Oranjestad, Aruba preclearance location.

## II. Statutory and Regulatory Requirements

### *A. Inapplicability of Public Notice and Delayed Effective Date Requirements*

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. Based on an Agreement between the Governments of the United States and the United Arab Emirates, preclearance operations in Abu Dhabi, United Arab Emirates have been operating since January 24, 2014. The final rule merely adds Abu Dhabi, United Arab Emirates to the list of CBP preclearance locations in foreign countries. This amendment is a technical change to merely update the list of preclearance locations. Therefore, notice and comment for this rule is unnecessary and contrary to the public interest because the rule has no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

### *B. The Regulatory Flexibility Act and Executive Order 12866*

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866, as supplemented by Executive Order 13563.

### *C. Signing Authority*

This document is being issued in accordance with 19 CFR 0.2(a) because preclearance locations are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Therefore, this rule may be signed by the Secretary of Homeland Security or his or her designee.

### List of Subjects In 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Foreign trade statistics, Imports, Organization and functions (Government agencies), Shipments, Vessels.

### Amendments to Regulations

For the reasons discussed above, part 101 of title 19 of the Code of Federal Regulations (19 CFR Part 101) is amended as set forth below.

## PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and specific authority citation for § 101.5 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1629, 1646a.

* * * * *

Section 101.5 also issued under 19 U.S.C. 1629.

* * * * *

■ 2. Revise § 101.5 to read as follows:

**§ 101.5 CBP preclearance offices in foreign countries.**

Listed below are the preclearance offices in foreign countries where CBP Officers are located. A Director, Preclearance, located in the Office of Field Operations at CBP Headquarters, is the responsible CBP Officer exercising supervisory control over all preclearance offices.

| Country | CBP office |
|---|---|
| Aruba | Oranjestad. |
| The Bahamas | Freeport. |
| | Nassau. |
| Bermuda | Kindley Field. |

| Country | CBP office |
|---|---|
| Canada | Calgary, Alberta. |
| | Edmonton, Alberta. |
| | Halifax, Nova Scotia. |
| | Montreal, Quebec. |
| | Ottawa, Ontario. |
| | Toronto, Ontario. |
| | Vancouver, British Columbia. |
| | Winnipeg, Manitoba. |
| Ireland | Dublin. |
| | Shannon. |
| United Arab Emirates | Abu Dhabi. |

Dated: August 4, 2014.

**R. Gil Kerlikowske,**

*Commissioner, U.S. Customs and Border Protection.*

[FR Doc. 2014–18759 Filed 8–7–14; 8:45 am]

**BILLING CODE 9111–14–P**

## INTERNATIONAL TRADE COMMISSION

## 19 CFR Part 201

## Rules of General Application

**AGENCY:** International Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The United States International Trade Commission (''Commission'') amends provisions of its Rules of Practice and Procedure concerning national security information. The amendments are designed to ensure that the Commission's procedures with respect to national security information are consistent with applicable authorities.

**DATES:** This final rule is effective September 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary, telephone (202) 205–2000, or Clara Kuehn, Attorney-Advisor, Office of the General Counsel, telephone (202) 205–3012, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking updates Subpart F of Part 201 of the Commission's existing Rules of Practice and Procedure concerning national security information to ensure that Subpart F is consistent with Executive Order 13526 of December 29, 2009, and its implementing directive (32 CFR part 2001).

On April 17, 2014, the Commission published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register**. 79 FR 21658, April 17, 2014. In the NOPR, the Commission proposed amendments to Subpart F that would make non-substantive changes to existing section 201.42; eliminate existing section 201.43 and existing subsections 201.44(b) through (f); and update the procedures for processing mandatory declassification review (''MDR'') requests in existing subsection 201.44(a) and incorporate them into a new section 201.43.

In the NOPR, the Commission requested public comment on the proposed rules, but no comments were received. The Commission found no reason to change the proposed rules before adopting them as final rules, which are republished below. A section-by-section analysis of the rules can be found at 79 FR 21658–21661 (April 17, 2014).

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission published a notice of proposed rulemaking, these regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). Moreover, these rules are certified as not having a significant economic impact on a substantial number of small entities.

These amended rules do not contain any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1531–1538) because these amended rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The Commission has determined that these amended rules do not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993).

These amended rules do not have federalism implications warranting the preparation of a federalism summary impact statement under Executive Order 13132 (64 FR 43255, August 4, 1999).

These amended rules are not ''major rules'' as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). Moreover, they are exempt from the reporting requirements of the Act because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

### List of Subjects in 19 CFR Part 201

Administrative practice and procedure.

For the reasons stated in the preamble, the United States International Trade Commission amends 19 CFR part 201 as follows:

## PART 201—RULES OF GENERAL APPLICATION

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

■ 2. Revise subpart F to read as follows:

### Subpart F—National Security Information

Sec.
201.42 Purpose and scope.
201.43 Mandatory declassification review.

**Authority:** 19 U.S.C. 1335; E.O. 13526, 75 FR 707.

## Subpart F—National Security Information

### § 201.42 Purpose and scope.

This subpart supplements Executive Order 13526 of December 29, 2009, and its implementing directive (32 CFR part 2001) as it applies to the Commission.

### § 201.43 Mandatory declassification review.

(a) *Requests for mandatory declassification review*—(1) *Definitions.* Mandatory declassification review (''MDR'') means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of Executive Order 13526.

(2) *Procedures.* Requests for MDR of information in the custody of the Commission that is classified under Executive Order 13526 or predecessor orders shall be directed to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. MDR requests will be processed in accordance with Executive Order 13526, its

implementing directive, and this section. An MDR request must describe the document or material containing the requested information with sufficient specificity to enable Commission personnel to locate it with a reasonable amount of effort. Requests for broad types of information, entire file series of records, or similar non-specific requests may be denied processing. The Secretary shall notify a requester who has submitted a non-specific request that no further action will be taken on the request unless the requester provides additional description.

(b) *Freedom of Information Act and Privacy Act requests.* (1) Requests for records submitted under the Freedom of Information Act (''FOIA'') (5 U.S.C. 552), as amended, or the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which include classified information shall be processed in accordance with the provisions of those acts and applicable Commission regulations (subpart C of this part (FOIA regulations); subpart D of this part (Privacy Act regulations)).

(2) If a requester submits a request under FOIA and also requests MDR, the Secretary shall require the requester to select one process or the other. If the requester fails to select one or the other process, the Secretary will treat the request as a FOIA request unless the requested materials are subject only to MDR.

(c) *Referral of MDR requests.* (1) Because the Commission does not have original classification authority and all U.S. originated classified information in its custody has been originally classified by another Federal agency, the Secretary shall refer all requests for MDR and the pertinent records to the originating agency for review. Following consultations with the originating agency, the Secretary shall notify the requester of the referral unless such association is itself classified under Executive Order 13526 or its predecessor orders. The Secretary shall request that the originating agency, in accordance with 32 CFR 2001.33(a)(2)(ii) and 2001.34(e):

(i) Promptly process the request for declassification,

(ii) Communicate its declassification determination to the Secretary, and

(iii) If the originating agency proposes to withhold any information from public release, notify the Secretary of the specific information at issue and the applicable law that authorizes and warrants withholding such information.

(2) Unless a prior arrangement has been made with the originating agency, the Secretary shall collect the results of that agency's review and inform the requester of any final decision regarding the declassification of the requested information as follows:

(i) If the originating agency denies declassification of the requested information in whole or in part, the Secretary shall ensure that the decision provided to the requester includes notification of the right to file an administrative appeal with the originating agency within 60 days of receipt of the denial and the mailing address for the appellate authority at the originating agency.

(ii) If the originating agency declassifies the requested information in whole or in part, the Secretary shall determine whether the requested declassified information is exempt from disclosure, in whole or in part, under the provisions of a statutory authority, such as the FOIA. The Secretary shall inform the requester that an appeal from a denial of requested declassified information must be received within 60 days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

(d) *Foreign Government Information*—(1) *Definitions.* ''Foreign government information'' (''FGI'') means information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence; information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or information received and treated as FGI under the terms of a predecessor of Executive Order 13526.

(2) *MDR requests for classified records in Commission custody that contain FGI.* The Commission will handle such MDR requests consistent with the requirements of Executive Order 13526 and 32 CFR part 2001. MDR requests for FGI initially received or classified by another Federal agency shall be referred to such agency following the referral procedures in paragraph (c) of this section.

(e) *Appeals of denials of MDR requests.* MDR appeals are for the denial of classified information only. Appeals of denials are handled in accordance with 32 CFR 2001.33(a)(2)(iii), which provides that the agency appellate authority deciding an administrative appeal of the denial of an MDR request shall notify the requester in writing of the reasons for any denial and inform the requester of his or her final appeal rights to the Interagency Security Classification Appeals Panel.

Issued: August 1, 2014.

By order of the Commission.

**Jennifer D. Rohrbach,**

*Supervisory Attorney.*

[FR Doc. 2014–18685 Filed 8–7–14; 8:45 am]

BILLING CODE 7020–02–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2010–0160; FRL–9914–70-Region 3]**

## Commonwealth of Virginia; Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

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

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** The Environmental Protection Agency (EPA) is correcting errors in the rule language of a final rule pertaining to the infrastructure requirements for the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS).

**DATES:** This final rule is effective on August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 11, 2011, EPA published a final rulemaking action announcing the approval of several infrastructure elements for the 1997 ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS for the Commonwealth of Virginia's State Implementation Plan (SIP). 76 FR 62635. In that final rulemaking, EPA approved the addition of section 10.1–1302 of the Code of Virginia into the Virginia SIP; however, in that rulemaking action, EPA inadvertently failed to include amendatory language which would have added an entry to the EPA-approved Virginia regulations table at 40 CFR 52.2420(c). This rulemaking action corrects that omission.

Section 553(b)(3)(B) of the Administrative Procedure Act provides that when an agency, for good cause, finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because EPA is merely correcting an errant omission of amendatory language from a previous rulemaking action. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

## II. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD, NSR, or Title V program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## III. Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of August 8, 2014. 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 correction to 40 CFR 52.2420 for Virginia is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: July 10, 2014.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart VV—Virginia

■ 2. Section 52.2420 is amended by adding, in numerical order, an entry for Section 10.1–1302 under the heading ''Code of Virginia'' in the table in paragraph (c) to read as follows:

**§ 52.2420 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

| State citation | Title/subject | State effective date | EPA approval date | Explanation [former SIP citation] |
|---|---|---|---|---|
| * | * | * | * | * |
| **Code of Virginia** | | | | |
| Section 10.1–1302 ..... | Qualifications of members of Boards ..... | 7/1/08 | 10/11/11, 76 FR 62635 | Section added. |
| * | * | * | * | * |

* * * * *

[FR Doc. 2014–18639 Filed 8–7–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 80

**[EPA–HQ–OAR–2014–0575; FRL 9914–88–OAR]**

**RIN 2060–AS29**

## Regulation of Fuels and Fuel Additives: Extension of Compliance and Attest Engagement Reporting Deadlines for 2013 Renewable Fuel Standards

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to extend two reporting deadlines for the 2013 compliance period under the Renewable Fuel Standard (RFS) program. This action specifically affects the annual compliance and attest engagement reporting requirement deadlines for regulated parties. The annual compliance reports and attest engagement reports for the 2013 RFS compliance period will not be due until 30 days and 90 days, respectively, following publication of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel in the **Federal Register**. This action ensures timely amendment of existing deadlines, before compliance obligations would otherwise go into effect.

**DATES:** This rule is effective on September 29, 2014 without further notice, unless the EPA receives adverse comment by September 15, 2014. If the EPA receives adverse comment, we will publish a timely withdrawal notice in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0575, 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–2014–0575. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information 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 the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without

going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*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. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to extend certain reporting requirement deadlines for the 2013 RFS compliance period if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in a subsequent final rule based on the proposed rule.

## II. Does this action apply to me?

Entities potentially affected by this direct final 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. |
| 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 action. This table lists the types of entities that the EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

## III. Background and Purpose

The EPA is today taking action to amend existing regulatory deadlines for regulated parties under the RFS program regarding the submission of annual compliance reports and attest engagement reports for the 2013 RFS compliance period.

We received comments on our November 29, 2013 proposed rulemaking to establish the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel [1] reiterating the importance to obligated parties of knowing their RFS obligations for the 2014 RFS compliance period prior to the compliance demonstration deadline for the 2013 RFS compliance period. The EPA recognized the value of this timing to obligated parties in the 2013 RFS final rule, and for that reason delayed the normally applicable February 28 compliance demonstration deadline to June 30, 2014 for the 2013 RFS compliance period.[2] We reasoned at that time that an extension to June 30, 2014 would be sufficient in light of the expected date of issuance of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel.

Because the 2014 renewable fuel standards were not final at the time the annual compliance reports for the 2013 RFS compliance period were coming due, we further extended this reporting deadline until September 30, 2014 (as well as the associated deadline for attest engagement reports until January 30, 2015).[3] However, in light of the further delay in issuing the final rule establishing the 2014 renewable fuel

[1] 78 FR 71732 (November 29, 2013).

[2] 78 FR 49794, 49800 (August 15, 2013).

[3] 79 FR 34242 (June 16, 2014).

percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel, we are issuing this direct final rule (with a parallel proposal in the event that we receive adverse comments) providing an additional extension of the annual compliance and attest engagement reporting deadlines for the 2013 RFS compliance period. Regulated parties will not have to submit annual compliance reports and attest engagement reports for the 2013 RFS compliance period until 30 days and 90 days, respectively, following publication of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel in the **Federal Register**.

## IV. 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).

### *B. Paperwork Reduction Act*

There are no new information collection requirements associated with this rulemaking. The extension of the existing regulatory deadlines for regulated parties under the RFS program imposes no 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 the 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 rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule amends the existing regulatory deadlines for regulated parties under the RFS program to submit reports demonstrating their compliance with the 2013 RFS standards, and to submit corresponding attest engagement reports. This action ensures timely amendment of existing deadlines, before compliance obligations would otherwise go into effect. The impacts of the RFS program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this rule will not impose any additional requirements on small entities beyond those already analyzed.

### *D. Unfunded Mandates Reform Act*

This 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. 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 rule only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and merely extends the otherwise applicable reporting deadlines.

### *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 amends the existing regulatory deadlines for regulated parties under the RFS program to submit reports demonstrating their compliance with the 2013 RFS standards, and to submit corresponding attest engagement reports. The new deadlines only apply to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this rule.

### *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). This 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 will be affected only to the extent they purchase and use regulated fuels. 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 EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because 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 amends certain reporting deadlines for regulated parties under the RFS program.

### *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 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 rulemaking does not involve technical standards. Therefore, the 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.

The EPA has determined that this 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.

*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).

**V. Statutory Authority**

Statutory authority for this action comes from sections 211 and 301(a) of the Clean Air Act, 42 U.S.C 7545 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: July 31, 2014.

**Gina McCarthy,**

*Administrator.*

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 80—REGULATION OF FUELS AND FUELS ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7521, 7545, and 7601(a).

### Subpart M—Renewable Fuel Standard

■ 2. Section 80.1451 is amended by revising paragraph (a)(1)(xiv) to read as follows:

**§ 80.1451 What are the reporting requirements under the RFS program?**

(a) * * *

(1) * * *

(xiv) For the 2013 compliance year, annual compliance reports shall be submitted within 30 days after publication in the **Federal Register** of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel.

* * * * *

■ 3. Section 80.1464 is amended by revising paragraph (g) to read as follows:

**§ 80.1464 What are the attest engagement requirements under the RFS program?**

* * * * *

(g) For the 2013 compliance year, reports required under this section shall be submitted to the EPA within 90 days after publication in the **Federal Register** of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel.

[FR Doc. 2014–18568 Filed 8–7–14; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 86 and 1039

**[EPA–HQ–OAR–2011–1032; FRL–9914–63–OAR]**

**RIN 2060–AR46**

## Emergency Vehicle Rule—SCR Maintenance and Regulatory Flexibility for Nonroad Equipment

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

**ACTION:** Final rule.

**SUMMARY:** This rule consists of three parts. First, the Environmental Protection Agency (EPA) is adopting minimum maintenance intervals for replenishment of consumable chemical reductant (commonly known as diesel exhaust fluid, or DEF) in connection with the use of selective catalytic reduction (SCR) technologies. Second, EPA is adopting provisions allowing manufacturers of nonroad engines to give operators the means to obtain short-term relief from emission controls while operating in emergency situations, such as those where operation of a nonroad engine or equipment is needed to protect human life, and where obtaining short-term relief from emission controls enables such operation. Third, EPA is adopting minor revisions to the direct final rule for emergency vehicles that became effective August 7, 2012, in response to comments received on the parallel Notice of Proposed Rulemaking.

**DATES:** This rule is effective on September 8, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–1032. 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, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket 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:**

Lauren Steele, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: 734–214–4788; fax number: 734–214–4816; email address: *steele.lauren@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Does this action apply to me?**

This action may affect you if you produce or import diesel engines that make use of a consumable chemical reductant to comply with emissions standards for nitrogen oxides.[1] You may also be affected by this action if you produce or import diesel engines for nonroad applications, or if you produce or import new on-road or nonroad diesel engines that are intended for use in vehicles that serve the emergency response industry.

The following table gives some examples of entities that may be affected by this action. Because these are only examples, you should carefully examine the regulations in 40 CFR parts 85, 86 and 1039. If you have questions regarding how or whether this rule applies to you, you may call the person listed in **FOR FURTHER INFORMATION CONTACT**.

| Category | NAICS Codes [a] | Examples of potentially regulated entities |
|---|---|---|
| Industry | 336111 | Engine and Truck Manufacturers. |
| | 336112 | |
| | 333618 | |
| | 336120 | |
| Industry | 541514 | Commercial Importers of Vehicles and Vehicle Components. |
| | 811112 | |
| | 811198 | |
| Industry | 811310 | Engine Repair, Remanufacture, and Maintenance. |

Note:
[a] North American Industry Classification System (NAICS)

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## I. Overview

### *A. Maintenance Intervals for Replenishment of Diesel Exhaust Fluid*

EPA is amending its regulations for diesel engines to add provisions specifying emission-related maintenance and scheduled maintenance intervals for replenishment of consumable chemical reductant in connection with engines and vehicles that use selective catalytic reduction (SCR) technologies. This action improves the clarity and transparency of EPA's requirements for SCR systems.

Most manufacturers of diesel engines and vehicles subject to EPA's standards regulating oxides of nitrogen ($NO_X$) have chosen to use SCR as a $NO_X$ reduction technology in order to meet these requirements. SCR systems use a chemical reductant that usually contains urea and is known as diesel exhaust fluid (DEF). The DEF is injected into the exhaust gas and requires periodic replenishment by refilling the DEF tank.

Given that SCR use is now common in the transportation sector and replenishment of DEF is necessary for SCR to be effective, in this final rule EPA is adding DEF replenishment to the list of scheduled emission-related maintenance published in the Code of Federal Regulations (CFR), and is adopting minimum replenishment intervals for this fluid, rather than relying on a case-by-case approval as was done under the previous regulations. We are adopting, as proposed, a minimum DEF replenishment interval for centrally fueled vocational vehicles equivalent in miles to the range provided by the fuel tank size; that is, a 1:1 distance ratio of DEF refill to fuel refill. In response to comments, we are adopting a minimum DEF replenishment interval for other heavy-duty vehicles equivalent to the fuel range (1:1), and a minimum interval of 4,000 miles for light-duty vehicles. See Section III for a complete description of comments received and explanations of the Agency's decisions.

### *B. Nonroad Equipment Used Temporarily in Emergency Service*

EPA is adopting provisions allowing manufacturers of compression-ignition nonroad engines (generally, those fueled with diesel fuel) to give operators the means to obtain short-term relief from emission controls while operating in

[1] References in this preamble to ''diesel'' engines (and the vehicles or equipment powered by them) generally include compression-ignition engines, including those fueled by natural gas, as well as other alternative fuel engines that are derived from diesel engines.

emergency situations. For purposes of this rule, an emergency situation would be one where the disruption in the operation of a nonroad engine or equipment would pose a risk to human life, and obtaining temporary relief from emission controls enables operation needed to protect human life. This relief addresses concerns about rare circumstances where unusual conditions of the emission control system could reduce the power, torque, or speed of engines on nonroad equipment when needed in emergency situations. We are adopting provisions for a short-term emergency deactivation of the normal emission controls, where such strategies could prevent the equipment from performing emergency-related work, such as recovery from a natural disaster. See Section IV for a complete description of comments received and explanations of the Agency's decisions on this provision.

*C. Emergency Vehicle Provisions: Amendments to Direct Final Rule*

On June 8, 2012, EPA published a direct final rule (DFR) for dedicated emergency vehicles that went into effect on August 7, 2012 (77 FR 34130). Under the June 8, 2012, rule, engine manufacturers were permitted to request to deploy specific emission controls or settings approved as Auxiliary Emission Control Devices (AECDs) for new engines, and Emergency Vehicle Field Modifications (EVFMs) for in-use engines that are sold for use only in emergency vehicles, defined as ambulances and fire trucks at 40 CFR 86.1803–01. EPA adopted that rule to enable dedicated emergency vehicles with diesel engines to perform mission-critical life- and property-saving work without risk of losing power, speed or torque due to abnormal conditions of the emission control systems. In this final action, EPA is revising some provisions of that final rule, consistent with comments received.

Specifically, EPA is allowing for case-by-case review of applications for AECDs or EVFMs for vehicles that EPA determines will be used in emergency situations where emission control function or malfunction may cause a significant risk to human life. With this amendment, it is EPA's intent to include vehicles other than fire trucks or ambulances that will be used for performing other public safety, rescue or emergency personnel or equipment transport functions related to saving lives and reducing injuries coincident with fires and other hazardous situations.

EPA is also modifying the definition of emergency equipment at 40 CFR 1039.801. We are clarifying which nonroad engines meet this definition, and we are allowing for case-by-case review of applications for AECDs or Emergency Equipment Field Modifications (EEFMs) for other emergency equipment. See Section V for a complete description of comments received and explanations of the Agency's amendments to this rule.

## II. Statutory Authority and Regulatory Background

*A. Statutory Authority*

Section 202(a)(1) of the Clean Air Act (CAA or the Act) directs EPA to establish standards regulating the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines that, in the Administrator's judgment, causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards apply for the useful life of the vehicles or engines. Section 202(a)(3) requires that EPA set standards applicable to emissions of hydrocarbons, carbon monoxide, $NO_X$ and particulate matter (PM) from heavy-duty trucks that reflect the greatest degree of emission reduction achievable through the application of technology which we determine will be available for the model year to which the standards apply. We are to give appropriate consideration to cost, energy, and safety factors associated with the application of such technology. We may revise such technology-based standards, taking costs into account, on the basis of information concerning the effects of air pollution from heavy-duty vehicles or engines and other sources of mobile source related pollutants on the public health and welfare.

Section 202(a)(4)(A) of the Act requires the Administrator to consider risks to public health, welfare or safety in determining whether an emission control device, system or element of design shall be used in a new motor vehicle or new motor vehicle engine. Under section 202(a)(4)(B), the Administrator shall consider available methods for reducing risk to public health, welfare or safety associated with use of such device, system or element of design, as well as the availability of other devices, systems or elements of design which may be used to conform to requirements prescribed by (this subchapter) without causing or contributing to such unreasonable risk.

Section 206(a) of the Act requires EPA to test, or require to be tested in such manner as it deems appropriate, motor vehicles or motor vehicle engines submitted by a manufacturer to determine whether such vehicle or engine conforms to the regulations promulgated under section 202. Section 206(d) provides that EPA shall by regulation establish methods and procedures for making tests under section 206.

Section 213 of the Act gives EPA the authority to establish emissions standards for nonroad engines and vehicles (42 U.S.C. 7547). Sections 213(a)(3) and (a)(4) authorize the Administrator to set standards and require EPA to give appropriate consideration to cost, lead time, noise, energy, and safety factors associated with the application of technology. Section 213(a)(4) authorizes the Administrator to establish standards to control emissions of pollutants (other than those covered by section 213(a)(3)) which ''may reasonably be anticipated to endanger public health and welfare.'' Section 213(d) requires the standards under section 213 to be subject to sections 206–209 of the Act and to be enforced in the same manner as standards prescribed under section 202 of the Act.

*B. Regulatory Background*

1. On-Highway $NO_X$ and PM Standards

On January 18, 2001, EPA published a rule promulgating more stringent standards for $NO_X$ and PM for heavy-duty highway engines (''the heavy-duty highway rule'').[2] The 0.20 gram per brake-horsepower-hour (g/bhp-hr) $NO_X$ standard in the heavy-duty highway rule first applied in model year (MY) 2007. However, because of phase-in flexibility provisions adopted in that rule and use of emission credits generated by manufacturers for early compliance, there was a transition period where manufacturers were able to continue to produce engines with $NO_X$ emissions greater than 0.20 g/bhp-hr. The phase-in provisions ended after model year (MY) 2009 so that the 0.20 g/bhp-hr $NO_X$ standard was fully phased-in for MY 2010. Because of these changes that occurred in MY 2010, the 0.20 g/bhp-hr $NO_X$ emission standard is often referred to as the 2010 $NO_X$ emission standard, even though it applied to engines as early as MY 2007.

The heavy-duty highway rule adopted in 2001 also included a PM emissions standard for new heavy-duty diesel engines of 0.01 g/bhp-hr, effective for engines beginning with MY 2007. To meet this stringent PM standard,

[2] Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5001).

manufacturers have relied on high-efficiency diesel particulate filter after-treatment to clean the exhaust.

2. Nonroad $NO_X$ and PM Standards

On June 29, 2004, EPA adopted technology-forcing standards for nonroad diesel engines, phasing in from the 2011 to 2015 model years.[3] These are known as the Tier 4 standards. This program includes requirements that are generally driving the use of $NO_X$ after-treatment for engines above 75 hp and, in many cases, diesel particulate filters, for engines above 25 hp.

3. Related Regulations With Emergency Vehicle Provisions

a. Light-Duty GHG Standards

On October 15, 2012, in a final rule issued jointly with the National Highway Traffic Safety Administration (NHTSA), EPA excluded light-duty emergency and police vehicles from all phases of greenhouse gas (GHG) emissions standards, in part due to concerns related to technical feasibility, and in part to harmonize with NHTSA's program. Consistent with authority under the Energy Policy and Conservation Act, NHTSA's corporate average fuel economy program provides manufacturers with the option to exclude emergency vehicles.[4] In that final Light-Duty GHG rule, EPA amended 40 CFR 86.1803–01 to clarify that *emergency vehicle* for purposes of the greenhouse gas emissions standards is different than *emergency vehicle* for provisions related to defeat devices and AECDs (See 77 FR 63155).

b. Marine Diesel Engine Standards

In addition to the exemption for on-highway engines from GHG standards, EPA has provided limited regulatory relief for other types of emergency-use engines. First, EPA's May 6, 2008, final rule adopting Tier 3 and Tier 4 standards for marine diesel engines allows for emergency and rescue vessels to meet an earlier, less stringent tier of standards under 40 CFR parts 89, 94 and 1042.[5] We adopted these provisions to avoid compromising engine performance during emergency operation, and to ensure that more stringent emission standards did not cause a situation where there were no certified engines available for emergency vessels. Such engines are not subject to the Tier 4 standards, which generally involve SCR and diesel particulate filters. The regulations also allow for meeting a less stringent standard if there are no suitable engines that are certified to the current standards.

c. On-Road and Nonroad Diesel Engine Standards

On June 8, 2012, EPA published a direct final rule for dedicated emergency vehicles, which became effective on August 7, 2012 (77 FR 34129). This rule revised the definition of defeat device to exclude EPA-approved Auxiliary Emission Control Devices (AECDs) for new engines, and Emergency Vehicle Field Modifications (EVFMs) for in-use engines that are sold for use only in fire trucks, ambulances, and dedicated nonroad emergency equipment. This rule maintains the applicability of the criteria pollutant emissions standards to emergency vehicles, while providing flexibility to manufacturers to design emission control systems that are appropriate for the extreme duty cycles of some trucks.

## III. Scheduled Maintenance and Maintenance Interval for Replacement of Diesel Exhaust Fluid

In this action, EPA is adding new provisions in its regulations that explicitly address replacement of DEF as part of approved emission-related scheduled maintenance and set out the permitted maintenance intervals for replacement of DEF on diesel-fueled new motor vehicles, new motor vehicle engines and new nonroad compression-ignition (NRCI) engines. The DEF refill regulations being finalized in this action allow for shorter intervals between maintenance in certain cases, compared to EPA's previous scheduled maintenance intervals, as described in Section III.C. EPA has previously applied the scheduled maintenance requirements for DEF refill through its alternate maintenance authority in 40 CFR 86.094–25(b)(7) and 40 CFR 86.1834–01(b)(7), which allows EPA to approve either a new scheduled maintenance interval or a change to an existing scheduled maintenance interval, based on a manufacturer's demonstration.

### *A. Background*

EPA's regulations limit the emission-related scheduled maintenance that may be performed for purposes of durability testing and for inclusion in maintenance instructions provided to purchasers of new motor vehicles and new motor vehicle engines. See 40 CFR 86.004–25(b); 40 CFR 86.094–25(b); 40 CFR 86.1834–01(b). The regulations include lists of specific types of emission-related maintenance and establish minimum allowable intervals for this maintenance. See 40 CFR 86.004–25(b)(4); 40 CFR 86.1834–01(b)(4). For example, in general, the maintenance interval is in miles for the adjustment, cleaning, or repair of fuel injectors, turbochargers, electronic engine control units, particulate trap or trap-oxidizers, exhaust gas recirculation systems, and catalytic converters. The minimum allowable limit is 100,000 miles of use (and then at 100,000 mile intervals thereafter) for diesel cycle light-duty vehicles, diesel cycle light-duty trucks, and light heavy-duty diesel engines and 150,000 miles for medium and heavy heavy-duty diesel engines. The regulations also allow manufacturers to request a different maintenance schedule or to request new scheduled maintenance, which includes maintenance that is a direct result of the implementation of new technology not found in production prior to MY 1980. This allowance is specified in 40 CFR 86.094–25(b)(7) and 40 CFR 86.1834–01(b)(7), and it is sometimes known as the (b)(7) process. This process requires manufacturers to justify that the additional maintenance is necessary and to demonstrate, for critical emission-related scheduled maintenance, that it is likely to be performed in use.

Similarly, EPA's regulations for NRCI engines (40 CFR 1039.125) limit the emission-related maintenance that may be performed for purposes of emissions testing and providing ultimate purchasers written instructions for properly maintaining and using the engine. For example, the maintenance interval for adjustment, cleaning, repair or replacement for catalytic converters generally may not occur more frequently than after 3,000 hours of use for engines below 130 kilowatt (kW) and 4,500 hours for engines at or above 130 kW. This regulation also allows manufacturers to request a different maintenance schedule or to request new scheduled maintenance, which includes maintenance on emission-related components that were not in widespread use on NRCI engines prior to MY 2011.

EPA adopted new emission standards applicable to emissions of $NO_X$ from light-duty vehicles and trucks on February 10, 2000 (65 FR 6698). Similarly, EPA adopted new standards applicable to emissions of $NO_X$ from heavy-duty highway engines and vehicles on January 18, 2001 (66 FR 5002). These standards phased in beginning with MY 2004 and all were

[3] Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel (69 FR 38958).

[4] *See* 49 U.S.C. 32902(e).

[5] Final Rule: Control of Emissions of Air Pollution from Locomotives and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder, 73 FR 25098, May 6, 2008, and republished to correct typographical errors on June 30, 2008, 73 FR 37096.

fully phased-in by MY 2010. Most manufacturers of affected diesel engines and vehicles have chosen to use SCR in order to meet these requirements. SCR systems require a reducing agent, and those on mobile sources use a solution of urea in water known as diesel exhaust fluid (DEF). The DEF is injected into the exhaust gas and requires periodic replenishment by refilling the DEF tank.

EPA adopted similar new emission standards applicable to emissions of $NO_X$ from NRCI engines on June 29, 2004 (69 FR 38958). These standards have begun to be implemented pursuant to a phase-in that began in MY 2011, and most manufacturers have chosen to use SCR to meet them. The SCR systems being incorporated into nonroad engines are a carryover from the motor vehicle systems, and thus they also require DEF to function properly. EPA conducted a webinar workshop on July 26, 2011, with NRCI engine manufacturers to address the application of SCR emission technology.[6]

In a guidance document signed on March 27, 2007 (CISD–07–07), EPA indicated its belief that the requirements for critical emission-related maintenance would apply to replenishment of the DEF tank and that manufacturers wanting to use SCR technology would likely have to request a change to scheduled maintenance per 40 CFR 86.094–25(b)(7) or 86.1834–01(b)(7).[7]

Following the completion of the guidance, EPA received several requests for new maintenance intervals for SCR-equipped motor vehicles and motor vehicle engines.[8] EPA granted these requests for model years 2009 through 2010 for light-duty vehicles and 2009 through 2011 for heavy-duty engines, in a notice that was published in the **Federal Register** (74 FR 57671, November 9, 2009). In granting the requests, EPA stated that it:

> . . . believes the maintenance of performing DEF refills on SCR systems should be considered as 'critical emission-related scheduled maintenance.' EPA believes the existing allowable schedule maintenance mileage intervals applicable to catalytic converters are generally applicable to SCR systems which contain a catalyst, but that the DEF refills are a new type of maintenance uniquely associated with SCR systems. Therefore, the 100,000-mile interval at 40 CFR § 86.1834–01(b)(4)(ii) for catalytic converters on diesel-cycle light-duty vehicles and light-duty trucks (and any other chassis-certified vehicles) and the 100,000-mile interval (and 100,000 mile intervals thereafter) for light heavy-duty diesel engines and the 100,000-mile interval (and 150,000 mile intervals thereafter) for medium and heavy heavy-duty diesel engines at 40 CFR § 86.004–25(b)(4)(iii) are generally applicable to SCR systems. As noted, the SCR systems are a new type of technology designed to meet the newest emission standards and the DEF refill intervals represent a new type of scheduled maintenance; therefore, EPA believes that manufacturers may request from EPA the ability to perform the new scheduled maintenance of DEF refills.

Consistent with that statement, EPA approved a minimum maintenance interval for refill of DEF tanks equal to the applicable vehicle's scheduled oil change interval for light-duty vehicles and light-duty trucks. For heavy-duty engines, EPA approved a maintenance interval equal to the range (in miles or hours) of the vehicle operation that is no less than the vehicle's fuel capacity (i.e., a 1:1 ratio) for vocational vehicles such as dump trucks, concrete mixers, refuse trucks and similar typically centrally fueled applications. For all other vehicles equipped with a constantly viewable DEF level indicator (e.g. a gauge or other mechanism on the dashboard that will notify the driver of the DEF fill level and the ability to warn the driver of the need to refill the DEF tank before other inducements occur), EPA approved a DEF tank refill interval equal to no less than twice the distance provided by the vehicle's fuel capacity (i.e., a 2:1 ratio). For all other vehicles that did not have a constantly viewable DEF level indicator, EPA approved a DEF tank refill interval equal to no less than three times the range of the vehicle's fuel capacity (i.e., a 3:1 ratio).

After the first year, engine and vehicle manufacturers provided additional requests for new maintenance intervals for vehicles and engines in model years not covered by the November 9, 2009 **Federal Register** notice.[9] On January 5, 2012 (77 FR 488), EPA updated and extended its approval of maintenance intervals for the refill of DEF tanks applicable to light-duty vehicles and light-duty trucks, as well as for heavy-duty engines for 2011 and later model years. For light-duty vehicles and light-duty trucks the approved interval for DEF refill remained at the scheduled oil change interval. For chassis-certified heavy-duty vehicles, EPA has required DEF refill intervals approximately as long as oil changes, although some approvals have allowed levels slightly shorter than the oil change interval. For heavy-duty engines the approved maintenance interval for centrally fueled vocational vehicles remained at 1:1 and for all other types of heavy-duty vehicles the approved maintenance interval has been 2:1.

In addition to the approvals for highway engines, EPA also established a similar approach for nonroad engines. During EPA's July 26, 2011, webinar workshop for NRCI engine manufacturers, EPA discussed the issue of maintenance intervals for the refill of DEF and instructed manufacturers to follow the regulatory provisions in order to petition EPA for what it thought were appropriate intervals.[10] Following the workshop, EPA received several requests for new maintenance intervals for SCR-equipped NRCI engines. EPA granted these requests for 2011 and later model years in a notice that was published in the **Federal Register** (77 FR 497, January 5, 2012). In granting the requests, EPA stated that it:

> . . . believes that SCR systems are a new technology and are properly considered a critical emission-related component. EPA believes the existing allowable schedule maintenance mileage intervals applicable to catalytic converters are generally applicable to SCR systems which contain a catalyst, but that the SCR systems are a new type of technology and that DEF refills are a new type of maintenance uniquely associated with SCR systems. Therefore, the 3,000 hour (engines below 130 kW) and 4,500 hour (engines at or above 130kW) intervals are generally applicable to SCR systems. As noted, the SCR systems are a new type of technology designed to meet the newest emission standards and the DEF refill intervals represent a new type of scheduled maintenance; therefore, EPA believes that manufacturers may request from EPA the ability to perform the new scheduled maintenance of DEF refills.

[6] See EPA's July 26, 2011 Webinar Presentation, *Nonroad SCR Certification,* available at *http://www.epa.gov/otaq/cert/documents/nrci-scr-web-conf.2011-07-25.pdf.*

[7] USEPA Office of Air and Radiation, Certification Procedure for Light-Duty and Heavy-Duty Diesel Vehicles and Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) Technologies, CISD–07–07, March 27, 2007, available at *http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=16677&flag=1.*

[8] *See* letter dated March 31, 2009 from Giedrius Ambrozaitis, Alliance of Automobile Manufacturers, Director, Environmental Affairs to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division; Letter dated May 8, 2009 from Jed Mandel, Engine Manufacturers Ass'n to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division; Letters dated June 29, 2009 and October 8, 2009 from Steven C. Berry, Director Government Relations Volvo Powertrain.

[9] *See* letter dated July 20, 2010 from Giedrius Ambrozaitis, Alliance of Automobile Manufacturers, Director, Environmental Affairs to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division; Letter dated June 13, 2011 from Timothy A. French, Engine Manufacturers Ass'n to Justin G. Greuel, EPA, Compliance and Innovative Strategies Division; Letter dated April 28, 2011 from Steve Berry, Volvo Powertrain; Letters dated August 18, 2011 and September 27, 2011 to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division from R. Latane Montague, Hogan Lovells.

[10] See Note 6, above.

EPA established a minimum maintenance interval for refill of NRCI DEF tanks, requiring that it be no less than the range in operating hours provided by the equipment's fuel capacity (i.e., a 1:1 engine-hour ratio of DEF refill to fuel refill).

All engines that have received approval for DEF refill maintenance intervals have been equipped with engine design elements to ensure that the DEF will be refilled in use. These design elements generally include warning lights, possible engine power derate, and possible engine shutdown for operation without DEF. This action does not change the need for such design elements.

*B. Summary of the NPRM and Comments*

In the NPRM published June 8, 2012 (77 FR 34149), EPA proposed to codify into the regulations the minimum DEF refill intervals being applied under the most recent administrative approvals (see previous section). However, we requested comment on the possibility of shorter intervals.

Commenters generally supported the proposal, and none argued to extend the minimum intervals beyond what was proposed. Moreover, none of the comments responding to EPA's request about shorter intervals expressed opposition to the possibility of shorter intervals. Most of the substantive comments on DEF refills were from engine and vehicle manufacturers, who generally asked for the following changes for the Final Rule:

- DEF refills for light-duty and light heavy-duty vehicles should be de-linked from oil change intervals.
- DEF refills for light-duty and light heavy-duty vehicles should be less than current recommended oil change intervals.
- The minimum DEF to fuel range ratio should be 1:1 for all heavy-duty motor vehicle engines.

The merits of these comments are discussed in the following sections. See the Summary and Analysis of Comments document in the rulemaking docket for a more complete discussion of the comments.

*C. Regulatory Action*

In this final action, EPA is adding DEF replenishment to the list of scheduled emission-related maintenance for diesel-fueled motor vehicles and motor vehicle engines, as well as for NRCI engines that use SCR, as proposed. These regulatory provisions are in 40 CFR 86.004–25(b)(4) and 40 CFR 86.1834–01(b)(4) for diesel-fueled motor vehicles and motor vehicle engines and 40 CFR 1039.125(a)(2) and (a)(3) for NRCI engines that use SCR. EPA is also incorporating appropriate maintenance intervals for this scheduled maintenance. Manufacturers complying with these new regulatory provisions will no longer be required to seek separate approval from EPA. The intervals being finalized are the same or shorter than those proposed, and are an outcome of the public comments we received following the proposal.

The comments emphasized the benefits of shorter minimum maintenance intervals, in particular the beneficial result that shorter intervals could have on the ability of manufacturers to comply with new standards related to greenhouse gases and fuel economy. Manufacturers also emphasized that the greater availability of DEF as well as design features used on current SCR-equipped vehicles and engines, including features that warn operators when DEF levels start to become low and reduce engine performance when DEF levels are very low or tanks are empty (''performance inducements''), make it highly likely that operators would refill their DEF tanks prior to DEF depletion.

We believe the general availability of DEF, along with current SCR engine design features, are sufficiently compelling reasons for EPA to finalize shorter DEF refill intervals than proposed. Longer intervals were previously approved, in part, due to concerns about operators' access to DEF as well as concerns that drivers were not yet familiar with this new maintenance practice. Now, design features such as performance inducements are sufficiently motivating operators to properly refill DEF, and DEF is easily obtainable. The final regulations do not change the current requirement that manufacturers employ the design features currently being used, or other methods with similar effectiveness, to ensure that DEF tanks are not likely to be depleted in use. The final regulations identify DEF refill as essential emission-related maintenance, which requires manufacturers to show that the maintenance is likely to be performed in use. Moreover, EPA has identified DEF tank level as a potentially adjustable parameter, and has provided guidance for manufacturers to show that they meet the regulatory requirement to ensure that DEF tank levels outside the acceptable range are unlikely to occur on in-use vehicles or engines, including discussion of the design features currently being used.[11]

EPA also notes that the regulations will continue to allow any manufacturer to petition EPA under the ''paragraph (b)(7) process'' for a shorter maintenance interval than that promulgated for DEF refills if the manufacturer can show that a shorter interval is technologically necessary for the particular engine or vehicle configuration being certified.

While DEF replenishment will be treated similar to other allowable maintenance in most respects, there will be some differences. First, EPA will not restrict DEF refills for laboratory testing of engines to enable testers to use non-production DEF tanks and fuel tanks for testing. Since neither the DEF tank size nor the fuel tank size would affect measured emissions, it would be an unnecessary burden to place restrictions on tank size or refill rate during laboratory testing of engines (other than to require that the tanks be large enough for the test to be completed). Second, the highway and nonroad regulations both allow critical emissions-related maintenance to be performed if manufacturers can make one of several demonstrations to show that there is a reasonable likelihood the maintenance will be performed in use. For some of the possible demonstrations, we do not believe that the specified criteria are sufficiently robust for DEF replenishment, which is a critical element for the operation of the SCR system, and the 90% $NO_X$ reductions expected from SCR systems. Specifically we are concerned about the adequacy of:

- Showing that the maintenance is performed at least 80 percent of the time in use.
- Relying on visible signals.
- Providing the maintenance free of charge.[12]

Therefore, we are stating in the regulations that those demonstrations are not sufficient for demonstration that DEF replenishment will occur in use. Unless we approve an alternate method, we will require that manufacturers demonstrate ''a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.'' This requirement generally reinforces EPA's current guidance requiring performance inducements when DEF levels become very low or tanks are empty. We note that while these specific provisions

[11] See USEPA Guidance CISD–07–07, at Note 7, above.

[12] See 40 CFR 86.004–25(b)(6)(ii)(B)-(E).

were not explicitly discussed in the NPRM, they reflect the broader principle that was discussed—that this action is generally codifying the existing approach to addressing DEF refills. Both the flexibility for DEF tank size during engine testing and the more stringent requirements for demonstrating that DEF refills will actually occur in use have applied under EPA's preexisting certification procedures.

1. Light-Duty Vehicles and Light-Duty Trucks

For light-duty vehicles and light-duty trucks (LDVs and LDTs), we are adopting a minimum interval of 4,000 miles. Under the (b)(7) process, we typically had been requiring DEF refill intervals at least equal to the scheduled oil change interval for the vehicle, which is typically more than 4,000 miles. Thus, for LDVs and LDTs, the final regulations differ in two ways from the previous policy: The DEF refill interval is being *decoupled* from the oil change interval, and the minimum interval is being shortened.

Regarding the first issue, manufacturer comments expressed the concern that tying DEF intervals to oil change intervals provides a disincentive to extend oil change intervals, and in fact, may create an incentive to actually shorten oil change intervals. Manufacturers were particularly concerned that the benefits of new automotive and motor oil technologies that allow consumers to drive for greater miles between oil changes would be reduced if mandated minimum DEF maintenance intervals are tied to oil change intervals. DEF maintenance intervals do not change as a result of the changes in technologies related to motor oil, so there would be a continuing mismatch between maintenance intervals. EPA agrees with manufacturers that longer oil change intervals are beneficial, in that they provide a cost savings for the consumer and generally also provide an environmental benefit by reducing the amount of waste oil generated.

In addition, one of the initial reasons for tying DEF refills to oil changes for light-duty vehicles as the new technology was introduced was to substantially increase the likelihood of proper refills for consumers who were unfamiliar with DEF. However, as SCR technology has become more conventional and DEF has become more available, operators are much more likely to be familiar with DEF. For those few who may be initially unfamiliar with the need to refill DEF, the warning lights and performance inducements will be sufficient to ensure proper refills. The second change from the prior policy is to set a 4,000 mile minimum interval, which will allow manufacturers to design their vehicles and engines for more frequent DEF refills than we have generally allowed to date. (Light-duty (b)(7) approvals have tied the DEF refill directly to the manufacturer's recommended oil change interval, which is typically 6,000 to 10,000 miles.) We are allowing this reduced maintenance interval to address manufacturer concerns about the size and weight of DEF tanks needed to achieve longer refill intervals, which could result in concerns with using limited packaging space, greater GHG emissions, and reduced fuel economy. Automobile manufacturers have stated that it takes approximately an 8 gallon DEF tank to assure the DEF will last for the length of a typical scheduled oil change interval. Requiring tanks this size may impede the space that is typical for the light-duty vehicle design and transportation needs of the consumer. Interior cabin volume and cargo space are highly valued attributes in light-duty vehicles and trucks. Manufacturers have historically strived to optimize these attributes, even to the point of switching a vehicle from rear-wheel drive to front-wheel drive to gain the extra interior cabin space taken up by where the drive shaft tunnel existed, or switching the size of the spare tire from a conventional sized tire to a small temporary tire to gain additional trunk space. Thus any significant interior, cargo or trunk space used to store a DEF tank would be unacceptable to customers. There are also packaging concerns with placing a large DEF tank in the engine compartment or in the vehicle's undercarriage. Most vehicle undercarriages are already crowded with the engine, exhaust system, including catalytic converters and mufflers, fuel tank, etc. limiting any available space for a DEF tank.

In addition to the practical impacts of devoting additional space to larger DEF tanks, the addition of the *weight* associated with larger DEF tanks presents other engineering challenges related to performance and efficiency. With a density of about 9 lb/gallon, an 8 gallon DEF tank would add 72 lbs to the weight of the vehicle. Changing this weight by even ten pounds would have a small but important fuel consumption impact. Thus any requirement for a larger DEF tank may have an adverse effect on the ability of a manufacturer to meet greenhouse gas emission standards and fuel economy standards.

Given the widespread retail availability of DEF and the inducements against operating the vehicle without DEF, we see little if any environmental benefit from requiring intervals greater than 4,000 miles.

To put this 4,000 mile interval in context, a vehicle with a 400 mile fuel range would need to refill the DEF tank no more frequently than every tenth fuel fill up. For operators who change oil every 7,500 miles and fill the DEF tank when they do, no more than one DEF refill would be needed between oil changes. We still believe it is necessary to require substantially longer DEF intervals for LDVs and LDTs than for commercial heavy-duty vehicles because of the wider range of usage patterns of light-duty vehicles. Most significantly, these light-duty vehicles are more likely to refuel at neighborhood refueling stations that may not have DEF. Ensuring that these vehicles can go through several tanks of fuel before needing to refill the DEF tanks reduces the likelihood that operators will allow the DEF tank to become completely empty.

2. Complete Heavy-Duty Pickups and Vans

EPA has treated heavy-duty complete trucks in the same manner as light-duty trucks; generally requiring DEF refill intervals approximately as long as oil change intervals. For the same reasons given above, we believe that tying DEF refills to oil changes is no more appropriate for complete heavy-duty pickups and vans than for LDVs or LDTs. Thus, the final regulations set the minimum DEF refill interval for complete heavy-duty pickups and vans to the same 4,000 mile level as for LDVs and LDTs.

3. Heavy-Duty Highway Engines

EPA believes it is reasonable to base the DEF refilling intervals for heavy-duty on diesel refueling intervals (rather than oil change intervals or a specific number of miles) because DEF refill for heavy-duty trucks is most commonly undertaken at the time of fuel refill due to the DEF infrastructure, which has developed at diesel refueling stations, in particular, highway truck stops. For heavy-duty engines (other than those used in light heavy duty vehicles subject to the 4,000 mile interval), we are finalizing a DEF tank refill interval equal to the range (in miles) of the vehicle operation that is no less than that provided by the vehicle's fuel capacity (i.e., a 1:1 distance ratio). This is what we proposed for vocational vehicles such as dump trucks, concrete mixers, refuse trucks and similar typically centrally fueled applications. For all other vehicles, we proposed the DEF tank refill interval must provide a

range of vehicle operation that is no less than twice the range of vehicle's fuel capacity (i.e., a 2:1 ratio). However, based on comments, we now believe that *requiring* a 2:1 ratio for vehicles that are not centrally-fueled is unnecessary. Commenters noted that because DEF is now widely available and the design features currently used in heavy duty engines, including performance inducements, are sufficiently severe, EPA should leave it to the market to decide whether larger DEF tanks are appropriate for non-centrally-fueled vehicles.

To assist manufacturers in designing this minimum refill interval, EPA is requiring that designs be evaluated under operating conditions reasonably representing worst case conditions, so that a vehicle would not be expected to run out of DEF before running out of fuel. For example, if the highest rate of DEF consumption (relative to fuel consumption) will occur under highway driving conditions, the DEF tank should be large enough that a single tank of DEF would be enough to continue proper operation of the SCR system for whatever number of highway miles is possible with a single tank of fuel. Conversely, if the highest rate of DEF consumption (relative to fuel consumption) will occur under city or urban driving conditions, the DEF tank should be large enough that a single tank of DEF would be enough to continue proper operation of the SCR system for whatever number of city or urban miles is possible with a single tank of fuel. As an approximation, manufacturers may choose to consider the DEF to fuel consumption ratio as observed over the Supplemental Emissions Test (SET) and the transient Federal Test Procedure (FTP) cycles, as appropriate. Manufacturers may also consider other cycles if they are more appropriate.

EPA has determined that allowing for refilling of DEF at lower intervals than required for other scheduled maintenance is technologically necessary. As discussed in the notice of proposed rulemaking, EPA knows of no SCR technology for any heavy-duty engine application that is capable of operating in a practical way without a DEF refill for the high mileage levels associated with otherwise applicable aftertreatment maintenance intervals. Moreover, there are several factors that support allowing DEF refill intervals to be in the range of a single tank of fuel. Manufacturers report that vehicle operators generally have been refilling DEF at the same time and location that they refill the fuel tanks. Also, manufacturers have incorporated warning signals and performance-related inducements on their SCR-equipped vehicles to ensure the substantial likelihood that DEF refilling will occur, and there is considerable evidence that heavy-duty vehicle operators in the United States have in practice been refilling their DEF tanks prior to the tanks becoming empty in virtually all situations.[13]

Prior to the NPRM, several manufacturers indicated that EPA should set the minimum required DEF refill interval at an interval equal to the range of distance provided by the vehicle's fuel tank (i.e., a 1:1 distance ratio) for all heavy-duty engines, not only those that are centrally-fueled.[14] They claimed that this shorter maintenance interval is ''necessary and appropriate to reflect current and anticipated changes in vehicle designs, significant changes in inducement strategies, and the increased availability of DEF.'' In particular, they noted that EPA's inducement requirements for SCR-equipped engines make it ''essentially impossible for an SCR vehicle to operate without regular DEF replenishment'' and the severity of inducements related to DEF levels (e.g., severe reduction in engine power and/or vehicle speed) is ''extraordinary and must be taken into account'' when EPA is determining appropriate maintenance intervals. We agree that, given the disruptions that could happen if power or speed restrictions occur, it is reasonable to expect that a driver with a 1:1 tank ratio will operate under a firm discipline that the DEF tank must be refilled every time the fuel tanks are filled, and is therefore likely to rely on gauge levels and warnings to trigger refills, in order to avoid these inducements.

Moreover, as commenters note, EPA has adopted new greenhouse gas standards for heavy-duty on-highway trucks,[15] and manufacturers are working to increase the fuel efficiency of their vehicles in advance of the effective dates of those regulations. Within these regulations, EPA recognizes the impact of weight savings on fuel efficiency and GHG emissions.[16] In addition, manufacturer comments note that they are developing new DEF dosing strategies that will result in reduced $CO_2$ emissions, which may involve increasing the DEF dosing rate. Increasing the DEF dosing rate also makes it more difficult to satisfy a 2:1 tank size ratio without increasing the size of the DEF tank above the size EPA considered appropriate in the context of the (b)(7) process.[17] For this reason, if the application of the 2:1 tank ratio remains in place, the interaction of the new greenhouse gas standards and the DEF tank size requirement may lead to larger DEF tanks, with their accompanying weight increase, in order to accommodate technology advancements developed to reduce $CO_2$ emissions, which conversely make it more difficult to meet the greenhouse gas requirements.

EPA proposed to not allow 1:1 DEF intervals for heavy-duty engines that are not centrally fueled. EPA noted that manufacturers had not provided sufficient evidence that any change in the maintenance interval is necessary or appropriate throughout the heavy-duty engine category, rather than for particular applications. While we acknowledged that the warnings and inducements in place for failure to replenish DEF will restrict the ability of operators to run without DEF, EPA was concerned that DEF tank ratios of 1:1 may place a greater burden on the operator in terms of the frequency of DEF refills. However, we received no comments from operators to support our concern. We now believe this is an issue better left to market forces to address.

4. Maintenance Intervals for Nonroad Compression-Ignition Engines

EPA is also incorporating minimum maintenance intervals for the scheduled maintenance of DEF refills on SCR-equipped NRCI engines. Specifically, we are finalizing the proposed 1:1 ratio (DEF tank range to fuel tank range), which is the same as was approved under the § 1039.125(a)(5) process. We received few comments on NRCI DEF refill rates, and those we did receive supported the proposed interval.

As noted in the NPRM, in evaluating minimum DEF refill intervals for NRCI engines, we took into consideration the space and weight constraints typically involved with the range of nonroad compression-ignition engines using SCR systems, including safety and impacts of weight and dosing rates on greenhouse gas emissions and fuel consumption. EPA also took into consideration the likelihood that the maintenance of DEF

[13] *See* 76 FR 32886 (June 7, 2011) and the studies cited at 32889–32891.

[14] *See* letters dated August 18, 2011 and September 27, 2011 to Karl Simon, EPA, Director, Compliance and Innovative Strategies Division from R. Latane Montague and Hogan Lovells.

[15] 76 FR 57106, September 15, 2011.

[16] 76 FR 57202, September 15, 2011.

[17] The size of the DEF tank is directly proportional to the rate at which DEF is used. For example, for a truck with a 100 gallon fuel tank, meeting a 2:1 ratio would require a 10 gallon DEF tank for a dosing rate of 0.05 gallons of DEF per gallon of fuel, but a 14 gallon tank for a dosing rate of 0.07 gallons of DEF per gallon of fuel.

refills will be performed by the owner or operator.

As with heavy-duty highway engines, the performance inducements related to DEF tank levels make it virtually impossible for engines to operate without DEF. Moreover, the usage patterns for nonroad equipment make them sufficiently similar to centrally-fueled heavy-duty on-highway vehicles that we have a reasonable expectation that DEF tank refills will occur on a timely basis, just as we have observed with highway engines.

## IV. Nonroad Engines in Temporary Emergency Service

In the NPRM published on June 8, 2012 (77 FR 34149), EPA proposed revisions to allow general purpose nonroad engines to obtain temporary relief so that emission controls do not hinder the engine's performance in limited emergency situations. We believe that in such situations, temporary flexibilities are appropriate because the possibility of risk to human life would outweigh the temporary emissions increases that may occur if SCR-equipped engines are operated without emission controls. Our existing nonroad engine compliance regulations in 40 CFR 1068.101(b)(1)(ii) allow operators to temporarily disable or remove emission controls to address emergency situations, with a limited exemption from the prohibition that normally applies for tampering with certified engines.[18] However, the existing regulations do not allow manufacturers to *design* the emission controls to be disabled or removed in emergency situations. With modern electronically controlled engines, many emission controls are integrated into the engine's control software. By adopting revisions in this rule, we are effectively extending the ability of operators to avoid situations where nonroad engine emission controls could impede the engine from providing life-saving emergency service, subject to the conditions described below. The flexibility we are adopting is very narrow and contains several provisions to ensure the need for the relief. We do not believe it will commonly be used in situations where there is no critical need for such relief.

We received public comments regarding the need for this temporary relief, the definition of emergency situation, the means of triggering the relief, and the duration of the allowed relief. Below, EPA describes the flexibilities that we are adopting for these engines, and the changes from the proposed rule that we have made to address the public comments. Commenters generally supported the proposal, and none argued against allowing such flexibility. Most of the substantive comments on these nonroad emergency AECDs were those of the engine manufacturers who asked for additional flexibility to improve the effectiveness of the allowance under actual emergency situations. See the Summary and Analysis of Comments document in the rulemaking docket for a more complete discussion of the comments.

EPA's Tier 4 $NO_X$ emission standards have resulted in an increasing volume of nonroad equipment designed with SCR, which is a $NO_X$ reduction technology for mobile sources. Nonroad SCR applications are expected to expand significantly in the coming years, and these are highly sophisticated emission control systems that sometimes work in very harsh conditions.

The consumable reductant in an SCR system is typically supplied as a solution of urea in water known as DEF. SCR-equipped engines generally include controls that limit the function of the engines if they are operated without urea, or if the engine's electronic control module (ECM) cannot otherwise confirm that the SCR system is properly operating. Such controls are generally called ''inducements,'' because they induce the operator to properly maintain the SCR emission control system. ''Performance inducements'' are inducements that affect performance of the engine, and do not include other inducements such as warning lights. EPA has provided information on aspects of SCR system maintenance that discusses possible warnings and other inducements that motivate an operator to ensure continued $NO_X$ emissions reductions occur.[19] Among the primary system faults that can lead to warnings and performance inducements are: Low DEF quantity; poor DEF quality; and a DEF freeze warning. In order for engine ECMs to detect these faults, various monitors and sensors are installed on nonroad equipment. Some examples of such monitored conditions include: A blocked DEF line or dosing valve; a disconnected or faulty DEF pump; and a disconnected or faulty DEF temperature sensor. It is important to emphasize that these inducements can be triggered because of an actual emission problem (such as a blocked DEF line or an empty DEF tank), or because of a sensor problem that reports a false positive problem even though the emission controls are still functioning properly. While we are confident that DEF is now widely available and easily obtainable across the United States, we are concerned that in emergency circumstances there may be a possibility of temporary disruptions in DEF supply, disruptions in communications between operators and service centers, or delays in response time for engine repair service.

While manufacturers have raised concerns primarily about SCR systems, it is also possible that other advanced emission controls, such as PM traps, could affect performance during emergencies. Since PM traps do not require any secondary fluid (like DEF), EPA did not anticipate that manufacturers would employ performance inducements to assure this technology would function properly in use. However, many manufacturers include engine-protection strategies for trap problems that can have effects on engine performance. While manufacturers have made great progress in eliminating trap-related performance issues, to whatever extent PM traps are used on nonroad engines, there is at least the possibility that they could lead to problems during emergencies.

### *A. Scope of This Flexibility*

1. What is an emergency situation?

For purposes of this rule, EPA proposed that an emergency situation would be one in which the functioning (or malfunctioning) of an engine's emission controls poses a significant risk to human life. Our proposal further explained that two rare conditions would have to be present for a situation to be the type of emergency where these provisions could apply. First, the engine would be needed to perform work related to reducing risk to human life. Second, the functioning (or malfunctioning) of an engine's emission control system would inhibit operation of the engine, and only a bypass of the normal emission controls would enable the equipment to continue operating temporarily to perform this emergency-related work. While SCR and PM trap systems for nonroad engines are designed to be hardy and robust in the wide range of possible operating environments for nonroad equipment, there is no guarantee that all of these sensors and system components will function properly at all times. In our

[18] ''This [tampering] prohibition does not apply in any of the following situations: . . . (ii) You need to modify the engine/equipment to respond to a temporary emergency and you restore it to proper functioning as soon as possible.'' 40 CFR 1068.101(b)(1)(ii).

[19] See EPA's July 26, 2011 Webinar Presentation, *Nonroad SCR Certification,* available at *http://www.epa.gov/otaq/cert/documents/nrci-scr-web-conf.2011-07-25.pdf*

proposed rule, we focused solely on the system's detection of adequate quantities of DEF and the operator's ability to timely refill DEF. However, as we heard from commenters, a nonroad engine can lose power if any of the emission control system faults that are programmed to trigger performance inducements are detected by the engine's ECM (or an equivalent event for technologies other than SCR).

We received comments asking us to expand our definition of emergency situation to include cases where the emergency was indirectly related to a risk to human life, or where a delayed risk was posed, or where property, welfare, or national security was at risk. We agree there may be a reasonable use of this flexibility where the threat avoided by continued operation of the engine is indirectly tied to human life, such as providing temporary power to a 911 call center. In response to comments, we are adopting regulations that describe an emergency situation as one where the condition of an engine's emission controls poses a significant *direct or indirect* risk to human life. EPA is not finalizing a more precise definition because we know we can not foresee all possible emergency situations, and we understand that the exact threats posed by various situations are rarely known at the time that decisions must be made about activating emissions control over-rides. As for the other examples of potential risks that could be avoided by continued operation of an engine, EPA is not further expanding the definition of emergency situation. Nonroad engines are generally operated for some beneficial reason. The purpose of the emergency operation provision was not to allow operation of nonroad engines in all situations where there may be benefits for property or welfare, but to have a narrow provision to allow operation of nonroad engines without emission controls where the danger of harm to human life outweighs the also-critical benefits of emission control. Expanding the definition of emergency situation could arguably allow use of uncontrolled nonroad engines in most or all situations for which nonroad engines are normally used, which could severely undercut the benefits of the emission controls.

2. What engines are covered?

The provisions we are adopting are intended primarily to address portable engines used for emergency backup power generation, flood control pumps, or in construction equipment (such as a bulldozer repairing a levee or a crane removing debris). For example, portable diesel-powered generators are often used to provide electrical power after natural disasters. If the generator is providing backup power to a medical facility during an emergency situation, then any interruption in service could risk the lives of the patients. Similarly, if a portable generator is providing backup power to a 911 call center during an emergency situation, then any interruption in service could indirectly pose a risk to human life. However, it is important to note that we are not limiting this flexibility to power generating units, flood control pumps, or construction equipment. These are just a few examples of how an ordinary piece of nonroad equipment could be used in an emergency situation.

While EPA proposed to apply this flexibility to nonroad engines, some commenters asked about the extent to which this allowance would apply for stationary engines. Currently, many NRCI engines are cross-certified for both nonroad (under 40 CFR part 1039) and stationary (under 40 CFR part 60) use because many of the requirements are the same, even though they are covered by different regulatory parts. However, EPA did not propose to apply this provision to stationary engines, and the legal requirements as well as the programmatic treatment of emergency situations, are different for stationary engines than for nonroad engines. Therefore, this final rule does not amend the regulations for stationary engines; dual certification will not be allowed for engines that include these emergency AECDs.

*B. Regulatory Action*

We are adopting a new section 1039.665 that specifies provisions allowing for AECDs that help to ensure proper function of engines and equipment in emergency situations. It is important to emphasize that EPA is confident that Tier 4 engines will function properly in the vast majority of emergency situations. Thus, we expect the AECDs allowed under this new provision will rarely be activated. We are adopting this provision merely as a precaution to ensure that emission controls do not put any person at risk during an emergency situation. The new regulations are clear that AECDs approved under this section are not defeat devices.

The proposed regulatory changes were intended to allow manufacturers to design into their nonroad engines a dormant AECD that could be activated during an emergency by contacting the engine manufacturer, including an engine dealership or service center. This AECD would act to suspend performance inducements or otherwise disable emission controls. Once active, the proposed AECD would have been allowed to function for 24 engine operating hours. Operators would have been allowed to reactivate the AECD by contacting the engine manufacturers again. The proposal also included reporting and recordkeeping requirements for operators and manufacturers.

In response to comments, we are finalizing the proposed allowance with some additional flexibility for manufacturers and operators. However, the basic structure remains the same as the proposed structure. The final rule allows EPA to certify a nonroad engine that contains a dormant but pre-armed AECD that can be activated for up to 120 engine hours per use during an emergency to prevent emission controls from interfering with engine operation. As proposed, we are finalizing a provision that enables manufacturers to offer, and operators to request, re-activations of this AECD for additional time in increments of 120 engine hours in cases of a prolonged emergency situation. Operators activating the AECD will be required to report the incident to the manufacturer, and manufacturers will submit an annual report to EPA summarizing the use of the AECD during the prior year. The Summary and Analysis of Comments document in the rulemaking docket provides a more complete discussion of changes from the proposed rule. The details of this allowance are described below.

3. What must manufacturers do for these Requirements?

a. Basic AECD Criteria

The new section 1039.665 specifies provisions allowing for AECDs that are necessary to ensure proper function of engines and equipment in emergency situations. It also includes specific criteria that the manufacturer must meet to ensure that any adverse environmental impacts are minimized. These criteria are:

- The AECD must be designed so that it cannot be activated more than once without the specific permission of the certificate holder. Reactivation of the AECD must require the input of a temporary code or equivalent security feature.
- The AECD must become inactive within 120 engine hours of becoming active. The engine must also include a feature that allows the operator to deactivate the AECD once the emergency is over.
- The manufacturer must show that the AECD deactivates emission controls

(such as inducement strategies) only to the extent necessary to address the expected emergency situation.

- The engine controls must be configured to record in non-volatile electronic memory the total number of activations of the AECD for each engine.
- The manufacturer must take appropriate additional steps to induce operators to report AECD activation and request resetting of the AECD. We recommend including one or more persistent visible and/or audible alarms that are active from the point when the AECD is activated to the point when it is reset.
- The manufacturer must provide purchasers with instructions on how to activate the AECD in emergency situations, as well as information about penalties for abuse.

Approval of AECDs under the final regulations will also be based on a general criterion that the AECD be consistent with good engineering judgment. When used in our regulations, the phrase ''good engineering judgment'' has a specific meaning as described in 40 CFR 1068.5. By specifying that the AECD be consistent with good engineering judgment, we address unforeseen technical details that may arise.

b. Changes From the Proposal Related to AECD Activation

Compared to the proposal, the provisions being finalized allow for AECD activation with less involvement from the manufacturer. First, under the final regulations, manufacturers may pre-arm the AECD so that operators can activate it initially without first contacting the manufacturer. Under the proposal, operators would have been required to contact the manufacturer to initially activate the AECD. Second, we are allowing the AECD to remain active for up to 120 hours instead of the proposed 24 hours. These two changes are the most significant changes from the proposal. Both of these changes reflect information received during the comment period that demonstrated the potential for delays in getting technical assistance from manufacturers during emergencies, especially for widespread events like hurricanes. Manufacturers indicated that for many engines (perhaps most engines) the type of initial activation envisioned in the proposal could not be done remotely. Our expectation was that operators would be able to activate the AECD by calling the manufacturer to obtain an activation code and then entering the code into the engine's onboard computer. However, manufacturers indicated that not all engines allow operators to interact with the onboard computer (other than to read trouble codes). Rather, for the engines without interactive control panels, it would be necessary for a technician to make a service call to activate the AECD. Even under the best circumstances, this could take a few hours. However, during a natural disaster, this could take several days. Information provided by manufacturers has demonstrated that in order to ensure that reduced performance related to emission controls does not create a significant risk to human life, the operator must be able to access the AECD without manufacturer involvement. We agree with the manufacturers' suggestion to allow initial arming of the AECD so that operators can activate it by taking a relatively simple action such as connecting a jumper in the wiring harness. Manufacturers do not disagree that rearming should require contacting the manufacturer.

It is also not clear that manufacturers will enable any of their engines to be rearmed remotely without a technician. Concerns about the potential for incorrect arming and/or abuse may lead manufacturers to require service calls even for engines that have interactive control panels that could theoretically be rearmed by entering a code provided by the manufacturer. Computer controls to enable remote rearming would need to be both reliable and secure, and manufacturers may determine that the developmental work necessary for this is not justified, given the small number of engines expected to actually activate the AECD even once.

Manufacturers also commented that in some emergencies, it could take several days before technicians could get to all engines needing service. In particular, manufacturers summarized their experience during Hurricane Sandy, which caused major damage in the northeastern United States, including damage to telecommunication, transportation, and power infrastructure. The combination of an increase in the number of engines requiring service (due in part to the number of backup generators being placed into long-term service) and the difficulty for technicians to travel to these engines scattered over such a large area caused long delays for operators needing service. In addition, manufacturers noted that the difficulty experienced by relief workers providing food and water to residents suggests the likelihood of delays in providing DEF for engines during major emergencies since the DEF infrastructure is far less developed than the food and water supply chain. For these reasons, manufacturers argued that limiting the AECD to 24 engine hours could result in engines shutting down before technicians could fix the engine or reset the AECDs. Based on their experience during Hurricane Sandy, manufacturers recommended extending this period to 120 engine hours. For backup generators that run continuously, this would allow manufacturers up to five days to reach each engines needing to have the AECD rearmed, and longer for engines running intermittently. We agree that limiting the AECD to 24 hours of operation would be insufficient to ensure that emission controls do not inhibit engine operation during prolonged disasters like hurricanes and major storms. Even two or three days may not be enough time to allow a storm to dissipate and roads to be cleared to the point where technicians could reach every engine needing emergency service. In response to this new information, we believe it is prudent to extend this allowance to 120 engine hours, which is equivalent to five operating days for engines running continuously.

We are also adopting two related provisions directed to manufacturers to minimize any abuse of this expended allowance. First, we are requiring manufacturers to include a method of deactivating the AECD after emergencies of short duration. This was not essential under the proposed approach because the AECD would deactivate itself after 24 engine hours. However, now the AECD can remain active for up to 120 engine hours, which could easily be longer than the actual emergency condition. Thus it is necessary to have some way for the operator to deactivate the AECD. Second, we are requiring the manufacturer to take appropriate additional steps to motivate operators to report AECD activation, at which time they may request resetting of the AECD. For example, a manufacturer could include persistent visible and/or audible alarms that are active from the point when the AECD is activated to the point when it is reset. We are also recommending that manufacturers add a secondary time limit for operation in which the AECD is deactivated before the 120-hour time limit is reached. Such a limit could be based on either on a set number of days (for engines that can track time when the engine is not running) or total engine hours including engine hours for which the AECD is not active.

c. Approval, Recordkeeping, and Reporting for Manufacturers

We are addressing such AECDs as part of engine certification and will only authorize the certifying manufacturer to

incorporate them into engine controls. In unusual circumstances, we could allow manufacturers to apply an approved emergency AECD to engines and equipment that have already been placed into service as a ''field fix''.

Manufacturers may ask for approval at any time. Still, we encourage manufacturers to obtain preliminary approval before submitting an application for certification. Otherwise, our review of the AECD, which may include many unique features, may delay the approval of the application for certification.

The manufacturer is required to keep records to document requests for and use of emergency AECDs under this section and submit a report to EPA within 90 days of the end of each calendar year in which it authorizes use of the AECD.

4. Operator Requirements

Operators who purchase equipment with this dormant feature will receive instructions on how to activate the AECD in emergency situations, as well as information about penalties for abuse. EPA would consider appropriate use of this feature to be during a situation where operation of a nonroad engine or equipment is needed to protect human life (or where impaired operation poses a significant direct or indirect risk to human life), and obtaining short-term relief from emission controls enables full operation of the equipment. EPA is adopting this provision to give operators the means to obtain short-term relief one time without the need to contact the manufacturer or EPA. In virtually any true emergency situation, delaying the activation to obtain approval could put lives at risk, and would be unacceptable. However, EPA retains the authority to evaluate, after the fact, whether it was reasonable to judge that there was a significant risk to human life to justify the activation of the AECD. Where we determine that it was not reasonable to judge (1) that there was a significant risk to human life; or (2) that the emission control strategy was curtailing the ability of the engine to perform, the operator may be subject to penalties for tampering with emission controls. The operator may also be subject to penalties for tampering if he continues to operate the engine with the AECD once the emergency situation has ended or the problem causing the emission control strategy to interfere with the performance of the engine has been or can reasonably be fixed. Nevertheless, we will consider the totality of the circumstances when assessing penalties, and retain discretion to reduce penalties where we determine that an operator acted in good faith. In addition, failure of an operator to notify the manufacturer as required by the regulations can also subject the operator to penalties for tampering.

We are finalizing operator requirements largely as proposed. The primary difference between the proposal and FRM is that, as a result of the longer period of time permitted for use of the AECD, we have added a specific prohibition on operating the engine with the AECD beyond the time reasonably needed for such operation. In addition, we have extended the deadline for operators to fully report the AECD activation to the manufacturer. The deadline was 30 calendar days from the incident under the proposal, but is 60 calendar days from the incident (from the day the AECD is first activated) under the final regulations due to concerns about operators' ability to gather the necessary information during the aftermath of a major emergency. If any consecutive re-activations occur, this report is due 60 calendar days from the first activation. The report must include:

- Contact information.
- A description of the emergency situation, including its duration, and supporting information.
- The reason for the activation of the AECD during the emergency situation. For example, lack of DEF or the failure of an emission-related sensor when the engine was needed to respond to an emergency situation.
- Contact information for an official capable of verifying the conditions of the emergency situation (such as a county sheriff, fire marshal, or hospital administrator).
- The engine serial number (or equivalent).
- A description of the extent and duration of the engine operation while the AECD was active, including steps taken to reduce the time of operation with the AECD.

While operators activating the AECD would be required to ultimately provide all of this information, they would be able to have the AECD reset simply by providing the contact information. Failure to provide this information to the manufacturer within the deadline would constitute a violation of the tampering prohibition.

## V. Emergency Vehicle Provisions: Amendments to Direct Final Rule

On June 8, 2012, EPA published a direct final rule (DFR) for dedicated emergency vehicles, allowing engine manufacturers to request specific emission controls or settings, approved as Auxiliary Emission Control Devices (AECDs) for new engines, and Emergency Vehicle Field Modifications (EVFMs) for in-use engines that are installed in ambulances and fire trucks. EPA adopted that rule to enable these dedicated emergency vehicles with diesel engines to perform mission-critical life- and property-saving work without risk of losing power, speed or torque due to abnormal conditions of the emission control systems.

EPA received favorable and constructive comments on that DFR and the identical provisions published in the parallel notice of proposed rulemaking. Because EPA determined that none of the comments on the emergency vehicle provisions were adverse, the rule became effective August 7, 2012. We have considered all of the constructive comments received, and we are adopting some minor revisions in response to those comments.

In this action, EPA is revising the definition of emergency vehicle to allow for case-by-case review of applications for AECDs or EVFMs for vehicles in dedicated emergency service that are not ambulances or fire trucks. EPA is also modifying the definition of emergency equipment at 40 CFR 1039.801, clarifying the rule's application to nonroad engines and wildland fire apparatus.

### *A. On-Highway Vehicles*

In the June 2012 proposed rule, EPA requested comment on our definition of emergency vehicle, specifically whether we should include those equipped with heavy-duty diesel engines that serve other civilian rescue, law enforcement or emergency response functions. We specifically requested information regarding instances of such vehicles experiencing or risking loss of power, speed or torque due to abnormal conditions of the emission control system, and how that may inhibit mission-critical life- and property-saving work. EPA received comments requesting an expansion of the definition of emergency vehicle to include search and rescue trucks, command and communication apparatus, law enforcement vehicles, or other vocational vehicles used for emergency response, but not directly associated with fire suppression or patient transport. In contrast, we received comments asking us to retain the current definition. We did not receive any specific evidence that any of these other vehicles have experienced in-use DPF regeneration difficulties or have duty cycles similar to fire trucks and ambulances. Therefore, EPA is not able to directly expand the AECDs and

EVFMs currently available to ambulances and fire trucks to all these other vehicle types in this action. However, to provide for the occasion where one of these vehicle types, or another vehicle type, might warrant similar treatment in the future, this final rule revises the definition of emergency vehicle at 40 CFR 86.1803–01, to allow for case-by-case approval of AECDs or EVFMs.

Specifically, if an engine manufacturer wishes to receive EPA's approval to install an emergency vehicle AECD in a vehicle other than a fire truck or ambulance, then the manufacturer must demonstrate that the vehicle will regularly be used in emergency situations, and that the functioning or malfunctioning of its standard emission control system may prevent the vehicle from performing as necessary when the vehicle is needed to perform work related to reducing risk to human life.

Where we determine that a new vehicle meets these criteria, the manufacturer may submit an application for an emergency vehicle AECD, subject to review and approval under 40 CFR 86.094–21(b). Where we determine that an in-use vehicle other than a fire truck or ambulance meets the above criteria, a manufacturer may apply for, and EPA may approve, an EVFM for that vehicle, subject to review and approval under 40 CFR 85.1716.

In the DFR, EPA explained that, with our definition of emergency vehicle, it was EPA's intent to include vehicles that are purpose-built and exclusively dedicated to firefighting, emergency/rescue medical transport, and/or performing other rescue or emergency personnel or equipment transport functions related to saving lives and reducing injuries coincident with fires and other hazardous situations.

However, in this final rule EPA is allowing for case-by-case review of applications for AECDs or EVFMs for vehicles that EPA determines will be used in emergency situations where emission control function or malfunction may cause a significant risk to human life. With this revision, it is EPA's intent to include other vehicles that will regularly be used for firefighting, emergency/rescue medical transport, and/or performing other public safety, rescue or emergency personnel or equipment transport functions related to saving lives and reducing injuries coincident with fires and other hazardous situations where the manufacturer can make the requisite showing. The Summary and Analysis of Comments document in the rulemaking docket provides a more detailed discussion of the comments received and our rationale for the changes adopted.

*B. Nonroad Equipment*

In the direct final rule, EPA adopted provisions for emergency equipment similar to those adopted for fire trucks and ambulances, where manufacturers of nonroad engines powering equipment in dedicated emergency service could apply for, and EPA could approve, AECDs or field modifications to prevent the equipment from losing speed or power due to abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring during operation related to emergency response. EPA received comments requesting a clarification or expansion of the definition of emergency equipment to include wildfire suppression dozers and dozer transport trucks. We also received comments asking us to retain the current definition. EPA understands that this rule may have had the unintended effect of unduly alarming some equipment operators. EPA has received no information with examples of any in-use nonroad dedicated emergency equipment having reduced performance due to the emission control system. We adopted these provisions as a precaution in the event that regulatory flexibilities are needed in the future.

Under the regulations published in the DFR, EPA believes that, under the current definition of emergency equipment, EPA may approve requests from manufacturers for AECDs and emergency equipment field modifications (EEFMs) for dedicated fire plows, which are specialty bulldozers designed to assist in suppression of wildfires. This is because we defined emergency equipment to include wildland fire apparatus, which includes ''any apparatus . . . designed primarily to support wildland fire suppression operations.''

Since publication of the proposed rule, we have learned from stakeholders that the term ''wildland fire apparatus'' includes trucks typically registered as motor vehicles, which would be covered under our definition of emergency vehicle and the provisions of 40 CFR part 86, rather than part 1039. Therefore in this action we are revising the definition of emergency equipment to exclude any wildland fire apparatus or aircraft rescue/fire apparatus that are registered as motor vehicles, as they are covered separately under our on-highway provisions. In response to comments, we are revising the definition to include any other equipment that is used in regular emergency service where it has a demonstrated need for power to perform work directly related to protecting human life, and where the functioning or malfunctioning of its standard emission control system may prevent the equipment from performing as necessary when the equipment is needed to perform such work. Because we are making revisions in response to comments, we are taking this opportunity to also add clarifying regulatory text regarding coverage of fire plows. The Summary and Analysis of Comments document in the rulemaking docket provides a more detailed discussion of the comments received and our rationale for the changes adopted.

## VI. Economic, Environmental, and Health Impacts of Final Rule

*A. Economic Impacts*

1. Economic Impacts of Emergency Vehicle Rule Revisions

EPA expects the economic effects of this action to be small, and to potentially have benefits that are a natural result of easing constraints.

Due to the optional and voluntary nature of the emergency vehicle provisions, there are no mandatory direct regulatory compliance costs to engine manufacturers. To the extent manufacturers elect to develop and deploy upgrades to engines for emergency vehicles, they may voluntarily incur some degree of costs.

Because this revision further eases constraints on which vehicles may benefit from these provisions, the economic impacts can only improve with this action. It is presumed that the benefits to society of enabling first responders to act quickly when needed outweigh the costs to society of any temporary increase in emissions from this small segment of vehicles.

2. Economic Impacts of SCR Maintenance Provisions

This action adopts minimum maintenance intervals that may be exceeded without preauthorization. No new regulatory burdens are being imposed. EPA is providing regulatory certainty that will allow affected manufacturers to plan their product development accordingly.

3. Economic Impacts for Nonroad Engines Used in Emergency Situations

EPA expects the economic effects of this final rule to be small, and to potentially have benefits that are a natural result of easing constraints. Due to the optional and voluntary nature of this action, direct regulatory compliance costs would only be incurred by engine

manufacturers to obtain or retain a benefit. To the extent manufacturers elect to develop and deploy upgrades to engines for use in emergency situations, they may incur some costs associated with engine certification and annual reporting. We do not expect there to be any operator costs for this allowance other than the costs associated with sending written confirmation of use of an optional AECD during an emergency situation to the certificate holder. Since we expect this option will be activated rarely (or perhaps not at all), total costs to operators will be small. Nonetheless, we are preparing a revised Information Collection Request (ICR) to estimate the anticipated reporting burden, as described in Section VIII.B.

*B. Environmental Impacts*

1. Environmental Impacts of Emergency Vehicle Rule Revisions

We expect any environmental impacts from these revisions will be small. By promulgating these amendments, it is expected that the emissions from this segment of the heavy-duty fleet will not change significantly.

2. Environmental Impacts of SCR Maintenance Provisions

EPA believes that any change in the incidence of emissions-related maintenance occurring in use as a result of this action will not have an effect on emissions. Therefore, there are no anticipated adverse environmental impacts.

3. Environmental Impacts for Nonroad Engines Used in Emergency Situations

EPA does not expect any significant environmental effects as a result of this final rule. This option will be activated rarely (or perhaps not at all) and will only affect emissions for a very short period.

## VII. Public Participation

On May 23, 2012, the EPA Administrator signed a Notice of Proposed Rulemaking (NPRM) for the Emergency Vehicle and SCR Maintenance rule. Also on May 23, the NPRM was posted on EPA's Web site. Also on that day, EPA contacted interested stakeholders by phone and email, notifying them of the availability of this material for review and comment. On June 8, 2012, the NPRM was published in the **Federal Register**. EPA held a public hearing on the NPRM in Ann Arbor, Michigan on June 27, 2012. At that hearing, oral comments on the NPRM were received and recorded. The comment period officially remained open through July 27, 2012. 16 separate written comments were received during that period, in addition to the oral testimony. A complete list of organizations and individuals that provided comments on the NPRM is contained in the Summary and Analysis of Comments, available in the docket for this rule (Docket ID EPA–HQ–OAR–2011–1032).

EPA received several comments that did not result in a regulatory change, and that have not otherwise been described in this preamble. In the Summary and Analysis of Comments, EPA addresses these other comments, including comments about the degree of relief offered by the emergency vehicle AECDs and the timing of the AECD approval process.

## VIII. 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).

*B. Paperwork Reduction Act*

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 et seq. and has assigned OMB Control Numbers 2060–0104 and 2060–0287. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. Although the flexibilities described in Section IV are voluntary, we will be proposing to amend our estimates of the information collection burden, based on our estimates of those likely to take advantage of this relief.

The information collection described in this rule is recordkeeping and reporting pertaining to instances of use of a voluntary flexibility provision for nonroad engines. The Agency wishes to track use of this provision, as well as have access to information that can help identify fraudulent use. Engine owners or operators would report information directly to engine manufacturers within a short period after use of this provision, and engine manufacturers would report a summary of this information to EPA on an annual basis. If owners or operators do not report the requested information to manufacturers, they may not retain access to this flexibility provision and may be in violation of the regulations. Section 208(a) of the CAA requires that engine manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore required to obtain or retain a benefit. We will consider confidential all information meeting the requirements of section 208(c) of the CAA.

The information that is subject to this collection would be collected whenever an equipment operator activates an engine feature that disables emission controls or performance inducement features associated with emission controls. The burden to the manufacturers affected by this rule is hard to estimate because this provision would only be lawfully activated during an emergency situation in the rare instances when the engine's emission controls or performance inducement features may cause a significant risk to human life. It is therefore estimated that, in any given year, this collection may affect approximately 12 engine manufacturers, reporting to EPA summaries representing 100 individual instances of use of this provision. We estimate the total burden associated with this rule is 110 hours annually (See Table VIII–1). This estimated burden for engine manufacturers is a total estimate for new reporting requirements. Burden is defined at 5 CFR 1320.3(b).

TABLE VIII–1—BURDEN FOR REPORTING AND RECORDKEEPING REQUIREMENTS

| | |
|---|---|
| Number of owners/operators expected may report to manufacturers. | <100. |
| Number of manufacturers expected may report to EPA. | <12. |
| Annual labor hours to prepare and submit information. | < 5 each. |
| Total Annual Information Collection Burden. | 110 Hours. |

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 are listed in 40 CFR part 9. When this ICR amendment is approved by OMB, the Agency will publish a technical

amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

*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 rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business primarily engaged in shipbuilding and repairing as defined by NAICS code 336611 with 1,000 or fewer employees (based on Small Business Administration size standards); (2) a small business that is primarily engaged in freight or passenger transportation on the Great Lakes as defined by NAICS codes 483113 and 483114 with 500 or fewer employees (based on Small Business Administration size standards); (3) a small business primarily engaged in commercial and industrial machinery and equipment repair and maintenance as defined by NAICS code 811310 with annual receipts less than $7.5 million (based on Small Business Administration size standards); (4) 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 (5) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that rule will not have a significant economic impact on a substantial number of small entities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule revises regulatory relief provided in the direct final rule for emergency vehicles and provides regulatory certainty related to engine and vehicle maintenance. As such, we anticipate no costs and therefore no regulatory burden associated with this rule. We have concluded that this rule will not increase regulatory burden for affected small entities.

*D. Unfunded Mandates Reform Act*

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act (UMRA) for State, local, or tribal governments. The rule imposes no enforceable duty on any State, local or tribal governments. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The agency has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Manufacturers have the flexibility and will likely choose whether or not to use optional AECDs based on their strategies for complying with the applicable emissions standards. Similarly, manufacturers may choose to use DEF maintenance intervals longer than the minimums adopted in this action, and manufacturers may elect to use SCR strategies that consume lower amounts of DEF. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule will apply to manufacturers of heavy-duty diesel engines and not to state or local governments. Thus, Executive Order 13132 does not apply to this action.

*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). This rule will be implemented at the Federal level and will impose compliance costs only on affected engine manufacturers depending on the extent to which they take advantage of the flexibilities offered. Tribal governments will be affected only to the extent they purchase and use vehicles with regulated engines. Thus, Executive Order 13175 does not apply to this final rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule 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: Energy Effects*

This final 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 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 action 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 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on September 8, 2014.

**List of Subjects**

*40 CFR Part 86*

Environmental protection, Administrative practice and procedure, Confidential business information, Motor vehicle pollution, Reporting and recordkeeping requirements.

*40 CFR Part 1039*

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: July 31, 2014.

**Gina McCarthy,**

*Administrator.*

For the reasons set forth in the preamble, the Environmental Protection Agency amends title 40, chapter I of the Code of Federal Regulations as follows:

## PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline Fueled, Natural Gas-Fueled, Liquefied Petroleum Gas-Fueled and Methanol-Fueled Heavy-Duty Vehicles

■ 2. Section 86.004–2 is amended by revising the definitions for ''Diesel exhaust fluid (DEF)'' and ''Emergency vehicle'' to read as follows:

**§ 86.004–2 Definitions.**

* * * * *

*Diesel exhaust fluid (DEF)* means a liquid reducing agent (other than the engine fuel) used in conjunction with selective catalytic reduction to reduce $NO_X$ emissions. *Diesel exhaust fluid* is generally understood to be an aqueous solution of urea conforming to the specifications of ISO 22241.

*Emergency vehicle* means a vehicle that meets one of the following criteria:

(1) It is an ambulance or a fire truck.

(2) It is a vehicle that we have determined will likely be used in emergency situations where emission control function or malfunction may cause a significant risk to human life. For example, we would consider a pickup truck that is certain to be retrofitted with a slip-on firefighting module to become an emergency vehicle, even though it was not initially designed to be a fire truck. Also, a mobile command center that is unable to manually regenerate its DPF while on duty could be an emergency vehicle. In making this determination, we may consider any factor that has an effect on the totality of the actual risk to human life. For example, we may consider how frequently a vehicle will be used in emergency situations or how likely it is that the emission controls will cause a significant risk to human life when the vehicle is used in emergency situations. We would not consider the pickup truck in the example above to be an emergency vehicle if there is merely a possibility (rather than a certainty) that the vehicle will be retrofitted with a slip-on firefighting module.

* * * * *

■ 3. Section 86.004–25 is amended by:

■ a. Revising paragraph (b)(4) introductory text;

■ b. Adding paragraph (b)(4)(v);

■ c. Revising paragraphs (b)(6)(i) introductory text and (b)(6)(i)(H);

■ d. Adding paragraph (b)(6)(i)(I); and

■ e. Revising paragraph (b)(6)(ii) introductory text.

The revisions and additions read as follows:

**§ 86.004–25 Maintenance.**

* * * * *

(b) * * *

(4) For diesel-cycle heavy-duty engines, emission-related maintenance in addition to or at shorter intervals than the following specified values will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section:

* * * * *

(v) For engines that use selective catalytic reduction, the diesel exhaust fluid (DEF) tank must be sized so that DEF replenishment can occur at an interval, in miles or hours of vehicle operation, that is no less than the miles or hours of vehicle operation corresponding to the vehicle's fuel capacity. Use good engineering judgment to ensure that you meet this requirement for worst-case operation. For example, if the highest rate of DEF consumption (relative to fuel consumption) will occur under highway driving conditions (characterized by the SET), the DEF tank should be large enough that a single tankful of DEF would be enough to continue proper operation of the SCR system for the

expected highway driving range with a single tank of fuel. Conversely, if the highest rate of DEF consumption (relative to fuel consumption) will occur under city or urban driving conditions (characterized by the transient FTP test), the DEF tank should be large enough that a single tank of DEF would be enough to continue proper operation of the SCR system for the expected city driving range with a single tank of fuel. For engine testing in a laboratory, any size DEF tank and fuel tank may be used; however, for our testing of engines, we may require you to provide us with a production-type DEF tank, including any associated sensors.

* * * * *

(6)(i) The following components are defined as critical emission-related components:

* * * * *

(H) Components comprising the selective catalytic reduction system (including DEF tank).

(I) Any other component whose primary purpose is to reduce emissions or whose failure would commonly increase emissions of any regulated pollutant without significantly degrading engine performance.

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in-use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in-use, and such showing shall be made prior to the performance of the maintenance on the durability data engine. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (b)(6)(ii) (A)–(F) of this section will be accepted as having a reasonable likelihood of the maintenance item being performed in-use, except that DEF replenishment must satisfy paragraph (b)(6)(ii)(A) or (F) of this section to be accepted as having a reasonable likelihood of the maintenance item being performed in-use.

* * * * *

## Subpart N– Exhaust Test Procedures for Heavy-Duty Engines

■ 4. Section 86.1305 is amended by adding paragraph (i) to read as follows.

### § 86.1305 Introduction; structure of subpart.

* * * * *

(i) You may disable any AECDs that have been approved solely for emergency vehicle applications under paragraph (4) of the definition of ''Defeat device'' in § 86.004–2. The emission standards do not apply when any of these AECDs are active.

## Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Complete Otto-Cycle Heavy-Duty Vehicles

■ 5. Section 86.1803–01 is amended by revising the definitions for ''Diesel exhaust fluid (DEF)'' and ''Emergency vehicle'' to read as follows.

### § 86.1803–01 Definitions.

* * * * *

*Diesel exhaust fluid (DEF)* means a liquid reducing agent (other than the engine fuel) used in conjunction with selective catalytic reduction to reduce $NO_X$ emissions. *Diesel exhaust fluid* is generally understood to be an aqueous solution of urea conforming to the specifications of ISO 22241.

* * * * *

*Emergency vehicle* means one of the following:

(1) For the greenhouse gas emission standards in § 86.1818, *emergency vehicle* means a motor vehicle manufactured primarily for use as an ambulance or combination ambulance-hearse or for use by the United States Government or a State or local government for law enforcement.

(2) For the OBD requirements in § 86.1806, emergency vehicle means a motor vehicle manufactured primarily for use in medical response or for use by the U.S. Government or a State or local government for law enforcement or fire protection.

(3) For other provisions under this subpart, *emergency vehicle* means a motor vehicle that is either—

(i) An ambulance or a fire truck; or

(ii) A vehicle that we have determined will likely be used in emergency situations where emission control function or malfunction may cause a significant risk to human life. For example, we would consider a pickup truck that is certain to be retrofitted with a slip-on firefighting module to be an emergency vehicle, even though it was not initially designed to be a fire truck. Also, a mobile command center that is unable to manually regenerate its DPF while on duty could be an emergency vehicle. In making this determination, we may consider any factor that has an effect on the totality of the actual risk to human life. For example, we may consider how frequently a vehicle will be used in emergency situations or how likely it is that the emission controls will cause a significant risk to human life when the vehicle is used in emergency situations. We would not consider the pickup truck in the example above to be an emergency vehicle if there is merely a possibility (rather than a certainty) that the vehicle will be retrofitted with a slip-on firefighting module.

* * * * *

■ 6. Section 86.1834–01 is amended by:

■ a. Revising paragraph (b)(4) introductory text ;

■ b. Adding paragraph (b)(4)(iii);

■ c. Revising paragraph (b)(6)(i)(H);

■ d. Adding paragraph (b)(6)(i)(I); and

■ e. Revising paragraph (b)(6)(ii) introductory text.

The revisions and additions read as follows:

### § 86.1834–01 Allowable maintenance.

* * * * *

(b) * * *

(4) For diesel-cycle vehicles, emission-related maintenance in addition to, or at shorter intervals than the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section:

* * * * *

(iii) For vehicles that use selective catalytic reduction, the replenishment of diesel exhaust fluid shall occur at an interval that is no less than 4,000 miles for typical operation.

* * * * *

(6) * * *

(i) * * *

(H) Components comprising the selective catalytic reduction system (including diesel exhaust fluid tank).

(I) Any other component whose primary purpose is to reduce emissions or whose failure would commonly increase emissions of any regulated pollutant without significantly degrading engine performance.

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in-use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in-use, and such showing shall be made prior to the performance of the maintenance on the durability data vehicle. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (b)(6)(ii) (A) through (F) of this section will be accepted as having a reasonable likelihood of the maintenance item being performed in-use, except that DEF replenishment must satisfy paragraph (b)(6)(ii)(A) or (b)(6)(ii)(F) of this section to be accepted as having a reasonable likelihood of the

maintenance item being performed in-use.

* * * * *

## PART 1039—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 7. The authority citation for part 1039 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart B—Emission Standards and Related Requirements

■ 8. Section 1039.125 is amended by revising paragraph (a)(1) introductory text and adding paragraphs (a)(2)(iii) and (a)(3)(iii) to read as follows:

### § 1039.125 What maintenance instructions must I give to buyers?

* * * * *

(a) * * *

(1) You demonstrate that the maintenance is reasonably likely to be done at the recommended intervals on in-use engines. We will accept scheduled maintenance as reasonably likely to occur if you satisfy any of the following conditions, with the exception that paragraphs (a)(1)(ii) and (iii) of this section do not apply for DEF replenishment:

* * * * *

(2) * * *

(iii) For SCR systems, the minimum interval for replenishing the diesel exhaust fluid (DEF) is the number of engine operating hours necessary to consume a full tank of fuel based on normal usage starting from full fuel capacity for the equipment. Use good engineering judgment to ensure that equipment manufacturers will meet this requirement for worst-case operation by following your installation instructions. For example, if your highest rate of DEF consumption (relative to fuel consumption) will occur under a steady state operating conditions characterized by one of the modes of the applicable steady-state certification test (to the extent that continuous operation at such mode is representative of real-world conditions), the DEF tank should be large enough that a single tank of DEF would be enough to continue proper operation of the SCR system for the expected operating range with a single tank of fuel at that mode. For engine testing in a laboratory, any size DEF tank and fuel tank may be used; however, for our testing of engines, we may require you to provide us with a production-type DEF tank, including any associated sensors.

(3) * * *

(iii) The provisions of paragraph (a)(2)(iii) of this section apply for SCR systems.

* * * * *

■ 9. Section 1039.130 is amended by revising paragraph (b)(3) to read as follows:

### § 1039.130 What installation instructions must I give to equipment manufacturers?

* * * * *

(b) * * *

(3) Describe the instructions needed to properly install the exhaust system and any other components. Include instructions consistent with the requirements of § 1039.205(u). Also describe how to properly size the DEF tank consistent with the specifications in § 1039.125(a), if applicable.

* * * * *

■ 10. Section 1039.135 is amended by revising paragraph (c)(15) to read as follows:

### § 1039.135 How must I label and identify the engines I produce?

* * * * *

(c) * * *

(15) For engines with one or more approved auxiliary emission control devices for emergency equipment applications under § 1039.115(g)(4), the statement: ''THIS ENGINE IS FOR INSTALLATION IN EMERGENCY EQUIPMENT ONLY.'' Note that this label requirement does not apply for engines that include emergency AECDs under § 1039.665 rather than § 1039.115(g)(4).

* * * * *

## Subpart F—Test Procedures

■ 11. Section 1039.501 is amended by revising paragraph (g) to read as follows:

### § 1039.501 How do I run a valid emission test?

* * * * *

(g) You may disable any AECDs that have been approved solely for emergency equipment applications under § 1039.115(g)(4). The emission standards do not apply when any of these AECDs are active.

## Subpart G—Special Compliance Provisions

■ 12. A new § 1039.665 is added to subpart G to read as follows:

### § 1039.665 Special provisions for use of engines in emergency situations.

This section specifies provisions that allow for temporarily disabling emission controls during qualified emergency situations. For purposes of this section, a qualified emergency situation is one in which the condition of an engine's emission controls poses a significant direct or indirect risk to human life. An example of a direct risk would be an emission control condition that inhibits the performance of an engine being used to rescue a person from a life-threatening situation. An example of an indirect risk would be an emission control condition that inhibits the performance of an engine being used to provide electrical power to a data center that routes ''911'' emergency response telecommunications.

(a) *Scope.* To facilitate temporarily disabling emission controls during a qualified emergency situation, manufacturers may apply for approval of auxiliary emission control devices (AECDs) under this section. Once activated, an AECD approved under this section may disable any emission controls as necessary to address a qualified emergency situation, subject to the limitations in this section. For the purposes of this section, automatically limiting engine performance to induce an operator to perform emission-related maintenance—such as refilling a DEF tank—is considered an emission control. AECDs approved under this section are not defeat devices, and their proper use during a qualified emergency situation is not prohibited under Clean Air Act section 203 (42 U.S.C. 7522). Manufacturers may apply for AECD approval at any time; however, we encourage manufacturers to obtain preliminary approval before submitting an application for certification. We may allow manufacturers to apply an approved AECD to engines and equipment that have already been placed into service.

(b) *AECD approval criteria.* We will approve an AECD where we determine that the following criteria have been met:

(1) The AECD's design must be consistent with good engineering judgment and the manufacturer must show that the AECD deactivates emission controls only to the extent necessary to address the expected emergency situation.

(2) Manufacturers must discourage improper activation of the AECD by displaying information where it is clearly visible to the equipment operator when the operator is in a position to activate the AECD. Unless we approve alternate language, state the following: ''EMERGENCY USE ONLY. SEE OWNERS MANUAL. PENALTIES APPLY FOR MISUSE.''

(3) Manufacturers may design and produce their engines with the AECD initially armed to allow operators to activate the AECD one time per engine

without any further input or permission from the manufacturer. The AECD may be subsequently reset as specified in paragraph (b)(8) of this section.

(4) Except as allowed by paragraph (b)(3) of this section, AECD activation must require either input of a temporary code, reconfiguration of the engine's electronic control module by a qualified service technician, or an equivalent security feature that is unique to each engine.

(5) The engine controls must be configured to record the total number of AECD activations in that engine's nonvolatile electronic memory.

(6) The engine controls must include an operator-activated switch or other element of design to allow the operator to manually deactivate the AECD once a qualified emergency situation has ended. This manual control may include a ''confirm-delete'' function, as needed, to prevent unintentionally deactivating the AECD. This control may allow for manual reactivation of the AECD provided that the AECD's automatic deactivation limits in paragraph (b)(7) of this section have not yet been reached, but such reactivation by operators would be allowed only under emergency situations. This manual deactivation control must not deactivate operator inducements required by paragraph (b)(9) of this section.

(7) The AECD must automatically deactivate within a cumulative engine run time of 120 hours after the AECD was initially activated (excluding any time the AECD was deactivated). The AECD may be subsequently reset as specified in paragraph (b)(8) of this section. For emission controls that involve a sequence of increasingly severe engine performance limits to induce operators to perform emission-related maintenance, the emission controls may be reset to the initial point of that sequence when the AECD is deactivated.

(8) The manufacturer must ensure that resetting the AECD cannot occur without the manufacturer's specific permission, and that resetting the AECD requires either input of a temporary code, reconfiguration of the engine's electronic control module by a qualified service technician, or an equivalent security feature that is unique to each engine. AECD resets may not occur unless either the manufacturer has evidence that the emergency situation is continuing or the operator provides the information required in paragraph (e) of this section, in writing or by any other means.

(9) The manufacturer must take appropriate additional steps to induce operators to report AECD activation and request resetting the AECD. We recommend including one or more persistent visible and/or audible alarms that are active from the point when the AECD is activated to the point when it is reset.

(c) *Required information.* Manufacturers producing engines equipped with an AECD approved under this section must communicate at least the following information in writing to the operator:

(1) Instructions for activating, deactivating, and reactivating the AECD; reporting AECD use; and requesting AECD resets.

(2) A warning that federal regulations prohibit activating the emergency AECD for something other than a qualified emergency situation, failing to disable the emergency AECD after a qualified emergency situation ends, and failing to notify the manufacturer and send reports as required under paragraph (e) of this section. The warning must also identify the maximum civil penalty for such violations as described in 40 CFR 1068.101.

(3) Notification that the manufacturer will send the information from the operator's report under paragraph (e) of this section to EPA and that federal regulation separately prohibits submitting false information.

(d) *Resetting AECDs.* The operator (or other person responsible for the engine/equipment) may request resetting the AECD at any time. The manufacturer may reset the AECD only if the manufacturer has evidence that the emergency situation is continuing, or after the operator provides the information required in paragraph (e) of this section, in writing or by any other means.

(e) *Operator reporting of AECD use.* The operator (or other person responsible for the engine/equipment) must send a written report to the manufacturer within 60 calendar days after activating an AECD approved under this section. The report must include the following:

(1) Contact name, mail and email addresses, and telephone number for the responsible company or entity.

(2) A description of the emergency situation, the location of the engine during the emergency, and the contact information for an official who can verify the emergency situation (such as a county sheriff, fire marshal, or hospital administrator).

(3) The reason for AECD activation during the emergency situation, such as the lack of DEF, or the failure of an emission-related sensor when the engine was needed to respond to an emergency situation.

(4) The engine's serial number (or equivalent).

(5) A description of the extent and duration of the engine operation while the AECD was active, including a statement describing whether or not the AECD was manually deactivated after the emergency situation ended.

(f) *Operator failure to report.* If the operator fails to submit the report required by paragraph (e) of this section to the manufacturer within 60 days of activating an AECD approved under this section, the manufacturer, to the extent it has been made aware of the AECD activation, must send written notification to the operator that failure to meet the submission requirements may subject the operator to penalties under 40 CFR 1068.101.

(g) *Prohibited acts.* The following actions by the operator are improper use of the AECD and are prohibited under Clean Air Act section 203 (42 U.S.C. 7522):

(1) Activating the emergency AECD for any use other than a qualified emergency situation where the emission control strategy would curtail engine performance.

(2) Failing to disable the emergency AECD after a qualified emergency situation has ended.

(3) Failing to disable the emergency AECD after the problem causing the emission control strategy to interfere with engine performance has been or can reasonably be fixed.

(4) Failing to provide the information required under paragraph (e) of this section within 60 days of AECD activation.

(h) *Manufacturer reporting to EPA.* Within 90 days after each calendar year, the manufacturer must send an annual report to the Designated Compliance Officer describing the use of AECDs approved under this section. A manufacturer may request an extension if it is impractical to meet this deadline as the result of an emergency situation occurring late in a given calendar year. The annual report must include a description of each emergency situation leading to each AECD activation and copies of the reports submitted by operators (or statements that an operator did not submit a report, to the extent of the manufacturer's knowledge).

(i) *Submissions to EPA.* Notifications and reports submitted to comply with this section are deemed to be submissions to EPA.

(j) *Recordkeeping.* The manufacturer must keep records to document the use of AECDs approved under this section until the end of the calendar year five

years after the onset of the relevant emergency situation. We may approve alternate recordkeeping and reporting requirements.

(k) *Anti-circumvention.* We may set other reasonable conditions to ensure that the provisions in this section are not used to circumvent the emission standards of this part.

■ 13. Section 1039.670 is amended by revising paragraphs (b) and (c)(3)(ii) to read as follows:

**§ 1039.670 Approval of an emergency equipment field modification (EEFM).**

* * * * *

(b) Include in your notification a full description of the EEFM and any documentation to support your determination that the EEFM is necessary to prevent the equipment from losing speed, torque, or power due to abnormal conditions of its emission control system during operation related to emergency response, or to prevent such abnormal conditions from occurring during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, or running out of diesel exhaust fluid (DEF) for engines that rely on urea-based selective catalytic reduction. Your determination must be based on an engineering evaluation or testing or both.

(c) * * *

(3) * * *

(ii) We will deny your request if we determine that the EEFM is not necessary to prevent the equipment from losing speed, torque, or power due to abnormal conditions of the emission control system during operation related to emergency response, or to prevent such abnormal conditions from occurring during operation related to emergency response.

* * * * *

## Subpart I—Definitions and Other Reference Information

■ 14. Section 1039.801 is amended by revising the definitions for ''Diesel exhaust fluid (DEF)'' and ''Emergency equipment'' to read as follows:

**§ 1039.801 What definitions apply to this part?**

* * * * *

*Diesel exhaust fluid (DEF)* means a liquid reducing agent (other than the engine fuel) used in conjunction with selective catalytic reduction to reduce $NO_X$ emissions. *Diesel exhaust fluid* is generally understood to be an aqueous solution of urea conforming to the specifications of ISO 22241.

* * * * *

*Emergency equipment* means any of the following types of equipment that is not a motor vehicle:

(1) Specialized vehicles used to perform aircraft rescue and/or fire-fighting functions at airports, with particular emphasis on saving lives and reducing injuries coincident with aircraft fires following impact, or aircraft ground fires.

(2) Wildland firefighting equipment designed primarily to support wildland fire suppression operations. For example, a bulldozer designed with special features for fighting wildfires would be a piece of emergency equipment.

(3) Any other equipment that we have determined will likely be used in emergency situations where emission control function or malfunction may cause a significant risk to human life. For example, we would consider nonroad equipment that is certain to be retrofitted with a slip-on firefighting module to be emergency equipment, irrespective of the equipment manufacturer's original design. In making this determination, we may consider any factor that has an effect on the totality of the actual risk to human life. For example, we may consider how frequently the equipment will be used in emergency situations or how likely it is that the emission controls will cause a significant risk to human life when the equipment is used in emergency situations. We will consider to what extent the flexibility provisions of § 1039.665 already address the risk. In the example above, we would not consider equipment to be emergency equipment if there is merely a possibility (rather than a certainty) that the equipment will be retrofitted with a slip-on firefighting module.

* * * * *

[FR Doc. 2014–18738 Filed 8–7–14; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 19**

**[FAC 2005–76; FAR Case 2012–014; Correction; Docket 2012–0014, Sequence 1]**

**RIN 9000–AM46**

## Federal Acquisition Regulation; Small Business Protests and Appeals; Correction

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule; correction.

**SUMMARY:** DoD, GSA, and NASA are issuing a correction to FAR Case 2012–014; Small Business Protests and Appeals (Item II), which was published in the **Federal Register** on July 25, 2014.

**DATES:** *Effective:* August 25, 2014.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–76, FAR Case 2012–014; Correction.

**SUPPLEMENTARY INFORMATION:** DoD, GSA, and NASA published a document in the **Federal Register** at 79 FR 43580, July 25, 2014, inadvertently, section heading 19.307 is incorrectly stated.

### Correction

In rule FR Doc. 2014–17499 published in the **Federal Register** at 79 FR 43580, July 25, 2014 make the following correction:

On page 43586, in the first column, section 19.307, section heading, correct ''Protecting'' to read ''Protesting''.

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

Dated: August 4, 2014.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

[FR Doc. 2014–18803 Filed 8–7–14; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 140403312–4632–02]**

**RIN 0648–BE17**

# Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Final 2014–2015 Spiny Dogfish Specifications

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements catch limits, commercial quotas, and possession limits for the spiny dogfish fishery for the 2014–2015 fishing years. The action was developed by the Mid-Atlantic and New England Fishery Management Councils pursuant to the fishery specification requirements of the Spiny Dogfish Fishery Management Plan. These management measures, including the increase in catch limits above the 2013 levels, are supported by the best available scientific information and reflect recent increases in spiny dogfish biomass, and are expected to result in positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

**DATES:** This rule is effective September 8, 2014.

**ADDRESSES:** Copies of the specifications, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The amendment is also accessible via the Internet at: *http://www.nero.noaa.gov.*

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Greater Atlantic Regional Fisheries Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at: *http://www.nero.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Tobey Curtis, Fishery Policy Analyst, (978) 281–9273.

**SUPPLEMENTARY INFORMATION:**

## Background

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils. The Atlantic States Marine Fisheries Commission also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan (FMP). The Federal Spiny Dogfish FMP was implemented in 2000, when spiny dogfish were determined to be overfished. The spiny dogfish stock was declared to be successfully rebuilt in 2010, and it continues to be above its target biomass.

This final rule implements specifications (i.e., annual catch limit (ACL), commercial quota, and possession limits) for the spiny dogfish fishery for the 2014 and 2015 fishing years, in accordance with the requirements of the Spiny Dogfish FMP. Proposed specifications published in the **Federal Register** on May 13, 2014 (79 FR 27274), with public comments accepted through June 12, 2014. Details concerning the development of these specifications and the proposed measures were contained in the preamble of the proposed rule and are not repeated here.

## Final 2014–2015 Specifications

Due to recent observed increases in spiny dogfish stock biomass, and based upon the recommendations of the Councils, the spiny dogfish ACLs and commercial quotas are being increased from 2013 levels (refer to the EA for more details; see **ADDRESSES**). Additionally, after consideration of public comments received on the proposed rule (refer to the Comments and Responses section below), the spiny dogfish trip limit is also being increased. NMFS is implementing the following specifications for the spiny dogfish fishery for the 2014–2015 fishing years:

1. ACL of 60.695 million lb (27,531 mt) and pre-Research Set-Aside (RSA) commercial quota of 49.037 million lb (22,243 mt) for 2014 (+20 percent from 2013);
2. ACL of 62.270 million lb (28,245 mt) and pre-RSA commercial quota of 50.612 million lb (22,957 mt) for 2015 (+24 percent from 2013); and
3. A Federal spiny dogfish trip limit of 5,000 lb (2,268 kg).

The two Councils could not agree on the spiny dogfish trip limit for 2014–2015. The Mid-Atlantic Fishery Management Council recommended the status quo trip limit (4,000 lb (1,814 kg)), and the New England Fishery Management Council recommended no limits on the possession of spiny dogfish (due in part to significant under-harvest of the spiny dogfish quotas in recent years). Under the FMP, when the two Councils recommend different specification measures, NMFS has the discretion to implement any measure not specifically rejected by both Councils. In this case, NMFS may implement whatever trip limit is deemed the most appropriate based upon the advice of the Councils and public comments. In acknowledgement of the concerns of both Councils, as well as the input of the public, NMFS is implementing a modest increase in the spiny dogfish trip limit. The increase to 5,000 lb (2,268 kg) is expected to increase opportunities to land the abundant spiny dogfish resource without resulting in additional market instability or other potential economic impacts.

NMFS has approved and implemented Amendment 3 to the Spiny Dogfish FMP (July 15, 2014; 79 FR 41141), which becomes effective on August 14, 2014. Amendment 3 implemented an RSA program for the Spiny Dogfish FMP, in which up to 3 percent of the commercial quota may be set aside to support scientific research. Under the specifications implemented in this rule, the maximum available RSA amounts are 1.470 million lb (667 mt) for 2014, and 1.519 million lb (689 mt) for 2015. A total of 250,000 lb (113 mt) of spiny dogfish RSA has been awarded for 2014, leaving 48.787 million lb (22,129 mt) for the final 2014 commercial quota. Assuming the maximum available amount of RSA is awarded in 2015, the final commercial quota would be 49.093 million lb (22,268 mt). However, any unused portion of the 2015 spiny dogfish RSA will be reallocated to the 2015 commercial quota. Additionally, Amendment 3 removed the seasonal allocation of the spiny dogfish commercial quota. Therefore, these final specifications will apply to the spiny dogfish fishery on an annual, coastwide basis. However, the regional and state-by-state allocation of the spiny dogfish quota by the Commission may still affect Federal spiny dogfish vessels.

## Comments and Responses

A total of 29 comments were received on the proposed rule from 22 individuals (predominantly fishermen from Massachusetts), 3 fishing industry organizations, 3 state agencies (Maine Department of Marine Resources, Massachusetts Division of Marine Fisheries, and the Rhode Island

Department of Environmental Management), and the Mid-Atlantic Fishery Management Council. All but one comment focused on the spiny dogfish trip limit and rationale for the preferred limit. Some supported the proposed rule, including the proposed unlimited possession measure. Others opposed unlimited possession of spiny dogfish, and stated preferences for the status quo (4,000-lb (1,182-kg) trip limit). Four commenters favored a slight increase in the spiny dogfish trip limit (e.g., 5,000 lb (2,268 kg)), but also opposed unlimited possession. Finally, one commenter expressed general opposition to the proposed specifications, but did not identify a preferred quota or trip limit. This section summarizes the principle comments contained in the individual comment letters that pertained to the proposed rule and NMFS' response to those comments.

*Comment 1:* Some commenters expressed support for the proposed specifications, including unlimited possession of spiny dogfish. They argued that spiny dogfish are over-abundant, and since the fishery has been under-harvesting its quotas in recent years (e.g., only 39 percent of the quota was landed in 2013), possession limits are not necessary. They also argued that unlimited possession in Federal waters would provide the states with more flexibility to tailor spiny dogfish management measures to the needs of their particular states.

*Response:* While NMFS acknowledges the high abundance of spiny dogfish and recent under-harvesting of the quota, unlimited possession may be imprudent at this time due to market and processing constraints. Demand for spiny dogfish in the primary export markets has been significantly reduced over the last two years. Large volume landings of spiny dogfish could result in market gluts and reduced prices, and disadvantage smaller day-boat fishing operations. The final trip limit of 5,000 lb (2,268 kg) is expected to help the fishery harvest more of the abundant spiny dogfish resource should markets recover during 2014 and 2015, while still constraining the rate of landings across the year and allowing broad participation across fisheries. States may still work through the Commission process to specify appropriate management measures for their own state waters.

*Comment 2:* Other commenters opposed the proposed unlimited possession of spiny dogfish, and commented in favor of maintaining the status quo (4,000-lb (1,812 kg)) trip limit. These commenters opposed increasing the spiny dogfish trip limit for a variety of reasons, including concerns that higher trip limits would drive the price down, increase market instability, disadvantage smaller fishing vessels, increase bycatch, reduce product quality, and increase the risk of overfishing. They also felt that any increases would be premature until the spiny dogfish markets recover or expand.

*Response:* NMFS agrees that unlimited possession of spiny dogfish could result in some of the negative impacts listed. However, it is unlikely that the modest trip limit increase to 5,000 lb (2,268 kg) would result in impacts significantly different from the status quo. The small increase would also potentially help more of the available spiny dogfish quotas to be landed, increase total revenues, and help maintain a consistent supply of spiny dogfish products should markets recover or expand. Maintaining the 4,000-lb (1,812-kg) trip limit under the significantly increased final commercial quotas would likely result in continued under-harvests.

*Comment 3:* Some commenters opposed the proposed unlimited possession of spiny dogfish, but favored minor increases to the spiny dogfish trip limit (e.g., 5,000 lb (2,268 kg)). They stated that incremental increases may benefit the fishery (e.g., slightly increased revenues), allow more of the available quotas to landed, maintain market stability, and help reduce the population of spiny dogfish, which is perceived as a pest causing unwanted predation pressure on more valuable fish stocks. Spiny dogfish processors in Massachusetts also indicated that their processing capacity could absorb an increase to a 5,000-lb (2,268-kg) trip limit.

*Response:* NMFS agrees that a modest increase in the spiny dogfish trip limit to 5,000 lb (2,268 kg) is justified for the 2014 and 2015 fishing years. This trip limit is not expected to result in the potential negative impacts associated with unlimited possession, while still providing some additional economic opportunity for the spiny dogfish fishery. The final trip limit has a higher likelihood of helping the spiny dogfish fishery achieve its optimum yield than status quo or unlimited possession.

*Comment 4:* A commenter opposed the proposed increases in spiny dogfish catch limits and commercial quotas, and suggested that they should be reduced by 50 percent.

*Response:* NMFS disagrees that reductions to the spiny dogfish catch limits are warranted. Spiny dogfish are not currently overfished or experiencing overfishing. Spawning stock biomass of spiny dogfish is currently estimated to be 33 percent above the target biomass level deemed sustainable for the stock. The increased catch limits and commercial quotas specified in this rule are based upon the best available scientific information, and meet the objectives of the Spiny Dogfish FMP and the requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

**Changes from Proposed Rule to Final Rule**

As described above, NMFS proposed unlimited possession of spiny dogfish in the proposed rule, as recommended by the New England Fishery Management Council. Based upon public comments, this final rule changes the spiny dogfish possession limit to 5,000 lb (2,268 kg) per trip.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator determined that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to those comments, relevant analyses contained in the action and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses and the EA are available from the Council (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

A total of 29 comments were received on the proposed rule. For a summary of

the comments, and NMFS' responses, see the Comments and Responses section above. The comments did not raise any issues or concerns related to the IRFA specifically. However, a number of commenters argued that the proposed unlimited possession of spiny dogfish could result in minor negative economic impacts. Based upon public comments, NMFS changed the possession limit from the proposed rule, and is increasing the trip limit only slightly (from 4,000 lb (1,812 kg) to 5,000 lb (2,268 kg)) in this final rule.

*Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

This rule would impact fishing vessels that land spiny dogfish. In 2012, 2,666 commercial fishing vessels held spiny dogfish permits. However, not all of those vessels are active participants in the fishery; only 489 vessels landed spiny dogfish in 2012. Additionally, if two or more vessels have identical owners, these vessels are considered to be part of the same firm. When permit ownership data are considered, in 2012, 1,976 fishing firms held at least one spiny dogfish permit. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity from which they derive the most revenue. Using the $5.5M cutoff for shellfish firms (NAICS 114112) and the $20.5M cutoff for finfish firms (NAICS 114111), there are 1,953 directly regulated small entities and 23 directly regulated large entities. There are 488 active fishing firms, of which 482 are small entities and 6 are large entities. On average, for small entities, spiny dogfish is responsible for a small fraction of landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery. While all 1,953 directly regulated small entities would be affected by these specifications, many of these small entities do not currently participate in this fishery and would be likely to experience only negligible economic impacts, if any.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

*Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes*

Three spiny dogfish management alternatives were analyzed for each year, 2014 and 2015. As described in the EA for this action (see **ADDRESSES**), Alternative 1 represents the Mid-Atlantic Council's recommended revised quotas and trip limits, Alternative 2 represents the New England Council's recommended revised quotas and trip limits, and Alternative 3 represents the no action quotas and trip limits for 2014 and 2015. While both Councils recommended the same revised ACLs and commercial quotas in Alternatives 1 and 2, as described above, the Mid-Atlantic Council recommended a 4,000-lb (1,814-kg) trip limit and the New England Council recommended an unlimited trip limit. The no action alternative (Alternative 3) includes lower ACLs and commercial quotas than the other two alternatives, and maintains a 4,000-lb (1,814-kg) trip limit, reflecting the final 2013–2015 spiny dogfish specifications implemented by NMFS on May 1, 2013 (78 FR 25862).

According to the analysis in the EA (see **ADDRESSES**), all of the alternatives under consideration in this action are expected to result in positive economic impacts. Alternatives 1 and 2 would increase the maximum potential landings for the spiny dogfish fishery during 2014 and 2015, as compared to Alternative 3. However, the commercial quotas in all three alternatives are higher than realized spiny dogfish landings during recent fishing years. In the 2013 fishing year, which ended on April 30, 2014, the spiny dogfish fishery landed only about 39 percent of its 40.842-million lb (18,526-mt) quota (refer to landings data at *www.nero.noaa.gov*), largely due to market issues and declines in demand in the primary export markets. Total spiny dogfish revenue from the 2012 fishing year was reported as $5.3 million, reflecting an average price of $0.20 per lb. The commercial quotas in Alternatives 1 and 2, if fully utilized, would correspond to approximately $9.9 million in potential revenue, whereas, the lower commercial quota in Alternative 3 would correspond to approximately $7.9 million in potential revenue.

Trip limits influence the rate of landings across the fishing year, and are not expected to result in direct positive or negative economic impacts on the fishery as a whole. While different trip limit alternatives may affect trip-level revenues, and have variable, short-term effects on price, total spiny dogfish revenues will still be largely influenced by the quota. The final trip limit implemented by this rule (5,000 lb (2,268 kg)) is a change from the proposed rule (unlimited possession) and acknowledges some of the potential minor economic impacts of unlimited possession, as described in the public comments (see Comments and Responses). Additionally, the Commission and individual states may implement various spiny dogfish trip limits in their state waters (current trip limits range from 4,000 lb (1,814 kg) to 10,000 lb (4,536 kg) per trip), which would effectively limit the allowable possession of spiny dogfish by Federal permit holders.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 4, 2014.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.235, revise paragraph (a)(1) to read as follows:

**§ 648.235 Spiny dogfish possession and landing restrictions.**

(a) * * *

(1) Possess up to 5,000 lb (2,268 kg) of spiny dogfish per trip; and

* * * * *

[FR Doc. 2014–18817 Filed 8–5–14; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 79, No. 153
Friday, August 8, 2014

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

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

**[Docket No. EERE–2013–BT–STD–0022]**

**RIN 1904–AD00**

### Energy Conservation Standards for Refrigerated Beverage Vending Machines: Public Meeting and Availability of the Preliminary Technical Support Document

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public meeting and availability of preliminary technical support document.

**SUMMARY:** The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the preliminary analysis it has conducted for purposes of considering amended energy conservation standards for refrigerated beverage vending machines. The meeting will cover the analytical framework, models, and tools that DOE is using to evaluate potential amended and new standards for this equipment; the results of preliminary analyses performed by DOE for this equipment; the potential energy conservation standard levels derived from these analyses that DOE could consider for this equipment; and any other issues relevant to the development of amended energy conservation standards for refrigerated beverage vending machines. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/73.*

**DATES:** DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than October 7, 2014. See section IV, ''Public Participation,'' of this notice of public meeting (NOPM) for details. DOE will hold a public meeting on September 16, 2014, from 9:00 a.m. to 5:00 p.m., in Washington, DC. Additionally, DOE plans to allow for participation in the public meeting via webinar.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room GH–019, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed. DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Please report to the visitor's desk to have devices checked before proceeding through security.

Interested persons may submit comments, identified by docket number EERE–2013–BT–STD–0022 and/or Regulation Identification Number (RIN) 1904–AD00, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: BVM2013STD0022@ee.doe.gov.* Include the docket number EERE–2013–BT–STD–0022 and/or RIN 1904–AD00 in the subject line of the message.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. (Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.)
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

*Docket:* The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, the framework document, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/73.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains instructions on how to access all documents in the docket, including public comments.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, ''Public Participation,'' of this document. For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Majette, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 286–1692. Email: *BVM2013STD0022@ee.doe.gov.* Or visit DOE's Refrigerated Beverage Vending Machine Web page at *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/24* for information about any existing standards and test procedures, and the history and impacts of previous DOE regulatory actions, for this category of equipment.

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA), as amended, Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' [2] As part of this program, EPCA directed DOE to prescribe energy conservation standards for beverage vending machines. (42 U.S.C. 6295(v)) [3]

EPCA requires that, not later than 6 years after issuance of any final rule establishing or amending a standard, DOE publish a notice of proposed rulemaking (NOPR) proposing new standards or a notice of determination that the existing standards do not need to be amended. (42 U.S.C. 6295(m)(1))

EPCA provides criteria for prescribing amended and new energy conservation standards. More specifically, DOE is required to ensure that each standard: (1) Achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified; and (2) results in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) EPCA also provides that in deciding whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the standard;
3. The total projected amount of energy savings likely to result directly from the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i))

EPCA further provides that DOE may not prescribe an amended or new standard if the standard is likely to result in the unavailability in the United States in any covered equipment type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time that the standard is prescribed. (42 U.S.C. 6295(o)(4))

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE will use to evaluate standards for the equipment at issue and the results of preliminary analyses DOE performed for the equipment. DOE publishes this notice announcing the availability of the preliminary technical support document (TSD), which details the preliminary analyses, discusses the comments DOE received from interested parties on the Framework Document, and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

## II. History of Energy Conservation Standards for Refrigerated Beverage Vending Machines

### *A. Background*

EPCA directed the Secretary to issue by rule, no later than August 8, 2009, energy conservation standards for refrigerated bottled or canned beverage vending machines. DOE began a rulemaking process in 2006 and in August 2009 published a final rule for beverage vending machines (henceforth referred to as the 2009 BVM final rule). 74 FR 44914 (Aug. 31, 2009). The entire rulemaking process that culminated with the publication of the 2009 BVM final rule will be referred to as the 2009 BVM rulemaking. The 2009 BVM final rule established energy conservation standards for beverage vending machines, with a compliance date of August 31, 2012. The 2009 BVM final rule document is currently available at *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0125-0005.*

### *B. Current Rulemaking Process*

In initiating this rulemaking, DOE prepared a Framework Document, ''Energy Conservation Standards Rulemaking Framework Document for Refrigerated Beverage Vending Machines,'' which describes the procedural and analytical approaches DOE anticipates using to evaluate energy conservation standards for refrigerated beverage vending machines. DOE published a notice that announced both the availability of the Framework Document and a public meeting to discuss the proposed analytical framework for the rulemaking. That notice also invited written comments from the public. 78 FR 33262 (June 4, 2013). The Framework Document is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0022.*

DOE held a public meeting on June 20, 2013, at which it described the various analyses DOE would conduct as part of the rulemaking, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA). Representatives for manufacturers, environmental and energy efficiency advocates, and other interested parties attended the meeting.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210 (Dec. 18, 2012).

[3] Because Congress included BVMs in Part A of Title III of EPCA, the consumer product provisions of Part A (not the industrial equipment provisions of Part A–1) apply to BVMs. DOE placed the regulatory requirements specific to BVMs in Title 10 of the Code of Federal Regulations (CFR), part 431, ''Energy Efficiency Program for Certain Commercial and Industrial Equipment'' as a matter of administrative convenience based on their type and will refer to BVMs as ''equipment'' throughout this document because of their placement in 10 CFR part 431. Despite the placement of BVMs in 10 CFR part 431, the relevant provisions of Title A of EPCA and 10 CFR part 430, which are applicable to all product types specified in Title A of EPCA, are applicable to BVMs. See 74 FR 44914, 44917 (Aug. 31, 2009). DOE proposes to amend 10 CFR 431.291 to clarify this point by specifying that the regulatory provisions of 10 CFR 430.33 and 430.34 and subparts D and E of 10 CFR part 430 are applicable to BVMs. DOE notes that, because the procedures in Parts 430 and 431 for petitioning the Department for and obtaining a test procedure waiver are substantively the same (79 FR 26591, 26601 (May 9, 2014)) the regulations for applying for a test procedure waiver for BVMs are those found at 10 CFR 431.401 rather than those found at 430.27.

Comments received since publication of the Framework Document have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received in response to the Framework Document.

## III. Summary of the Analyses Performed by DOE

For the refrigerated beverage vending machines covered in this rulemaking, DOE is both considering amending standards for equipment classes with current standards, as well as potentially establishing standards for covered equipment classes which do not currently have standards. DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine equipment price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0022.*

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses. These will be expanded upon for a notice of proposed rulemaking (NOPR), if DOE determines that amended energy conservation standards are technologically feasible, economically justified, and would save a significant amount of energy, based on the available information. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and the NIA. In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR.

### *A. Engineering Analysis*

The engineering analysis establishes the relationship between the cost and efficiency levels of the equipment that DOE is evaluating as potential energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. The engineering analysis identifies representative baseline equipment, which is the starting point for analyzing technologies that provide energy efficiency improvements. ''Baseline equipment'' refers to a model or models having features and technologies typically found in minimally-efficient equipment currently available on the market and, for equipment already subject to energy conservation standards, models that just meet the current standards. After identifying the baseline models, DOE estimated manufacturer selling prices by using a consistent methodology and pricing scheme that includes material costs and manufacturer markups. Chapter 5 of the preliminary TSD discusses the engineering analysis.

### *B. Markups To Determine Prices*

DOE derives customer prices for equipment based on manufacturer markups, retailer markups, distributor markups, contractor markups (where appropriate), and sales taxes. In deriving these markups, DOE determines the major distribution channels for equipment sales, the markup associated with each party in each distribution channel, and the existence and magnitude of differences between markups for baseline equipment (baseline markups) and higher-efficiency equipment (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the markups at each step in each distribution channel. Chapter 6 of the preliminary TSD addresses the markups analysis.

### *C. Energy Use Analysis*

The energy use analysis provides estimates of the annual energy consumption of refrigerated beverage vending machines. The energy use analysis seeks to estimate the range of energy consumption of the equipment that meets each of the efficiency levels considered in a given rulemaking as it is used in the field. DOE uses these values in the LCC and PBP analyses and in the NIA. Chapter 7 of the preliminary TSD addresses the energy use analysis.

### *D. Life-Cycle Cost and Payback Period Analyses*

The LCC and PBP analyses determine the economic impact of potential amended standards on individual consumers. The LCC is the total cost of purchasing, installing, and operating considered equipment over the course of its lifetime. The LCC analysis compares the LCCs of equipment designed to meet possible energy conservation standards with the LCC of the equipment likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of manufacturer selling price, distribution chain markups, sales taxes, and installation cost); (2) the operating cost of the equipment (energy cost, water and wastewater cost in some cases, and maintenance and repair cost); (3) equipment lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of higher-efficiency equipment through savings in the operating cost of the equipment. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency equipment, compared to the baseline equipment, by the annual savings in operating costs. Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

### *E. National Impact Analysis*

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from amended standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV for each candidate standard level for refrigerated beverage vending machines as the difference between a base-case forecast (without amended standards) and the standards-case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage) by the average unit energy consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined for the lifetime of the equipment shipped from 2019 to 2048 for all equipment classes. The analysis period is 30 years, which is consistent with other rulemakings and sufficiently long to cover the expected life of the equipment. The analysis period begins in 2019, the expected year of compliance with an amended standard. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, estimated equipment lifetimes, equipment installed costs and operating costs, equipment annual energy consumption, the base-case efficiency projection, and discount rates. Chapter 10 of the preliminary TSD addresses the National Impact Analysis.

## IV. Public Participation

DOE invites input from the public on all the topics described above. The preliminary analytical results are subject to revision following further review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. The final rule establishing any amended energy conservation standards will contain the final analytical results and will be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD from DOE's Web site and to be prepared to discuss its contents. Once again, a copy of the preliminary TSD is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0022.* However, public meeting participants need not limit their comments to the topics identified by DOE in the preliminary TSD; DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this equipment or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by October 7, 2014 comments, data, and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of energy conservation standards for beverage vending machines.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Afterwards, the Department will publish either a determination that the standards for refrigerated beverage vending machines need not be amended or a NOPR proposing to amend those standards. The NOPR would include proposed energy conservation standards for the equipment covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

### *A. Attendance at the Public Meeting*

The time and date of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. The public meeting will be held at the U.S. Department of Energy, Forrestal Building, GH–019, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

You can attend the public meeting via Webinar, and registration information, participant instructions, and information about the capabilities available to Webinar participants will be published on the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/73.* Participants are responsible for ensuring their computer systems are compatible with the Webinar software.

The purpose of the meeting is to receive comments and to help DOE understand potential issues associated with this rulemaking. DOE must receive requests to speak at the meeting before 5:00 p.m. Tuesday, September 2, 2014. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 5:00 p.m. Tuesday, September 9, 2014.

### *B. Procedure for Submitting Requests to Speak*

Any person who has an interest in today's notice or who is a representative of a group or class of persons that has an interest in these issues may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to Ms. Brenda Edwards at the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown in the **ADDRESSES** section or email to *Brenda.Edwards@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Office. The request to give an oral presentation should ask for such alternative arrangements.

### *C. Conduct of the Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306). A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will also be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

*D. Submission of Comments*

DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than the date provided at the beginning of this notice. Please submit comments, data, and other information as provided in the **ADDRESSES** section. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE–2013–BT–STD–0022 and/or RIN 1904–AD00 and, wherever possible, carry the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

## V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this NOPM.

Issued in Washington, DC, on August 1, 2014.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2014–18799 Filed 8–7–14; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR PART 52

**[EPA–R05–OAR–2005–OH–0002; FRL–9914–93-Region–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Ohio; Particulate Matter

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is reopening the comment period for a proposed Clean Air Act rule published June 26, 2014. EPA solicited comment on whether events *subsequent to* a prior comment period should alter EPA's proposed disapproval of a June 4, 2003, Ohio submission with respect to SIP opacity limitations. In response to requests from the Ohio Environmental Protection Agency (Ohio EPA) and from the Ohio Utility Group, EPA is reopening the comment period for 30 days.

**DATES:** Comments must be received on or before September 8, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2005–OH–0002, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail or Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2005–OH–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

On June 27, 2005, EPA proposed to disapprove provisions relating to opacity limitations contained in an Ohio submittal dated June 4, 2003. EPA is evaluating the public comments received in response to the proposed disapproval. Given the passage of time,

on June 26, 2014 (79 FR 36277), EPA solicited supplemental comment specifically with respect to whether events *subsequent to* the prior comment period should alter EPA's proposed disapproval of Ohio's submission dated June 4, 2003, with respect to SIP opacity limitations. EPA did not solicit comments on Ohio's submission or EPA's proposed action of June 27, 2005, on that submission, except to the extent that events subsequent to the original comment period are relevant to EPA's evaluation of the submission and EPA's proposed action. This was not a reopening of the original comment period, but the opening of a supplemental comment period. In the supplemental proposal, we requested comment by July 28, 2014. We received a request from the Ohio EPA, on July 7, 2014, to extend the comment period an additional 90 days. We also received a similar request from the Ohio Utility Group on July 17, 2014. EPA has considered these requests and has decided to reopen the comment period for an additional 30 days. EPA considers a comment period extended by more than 30 days (including time between July 28, 2014 and today) to be more than sufficient to research and analyze any events subsequent to the original comment period which might be relevant to this supplemental comment period. Neither Ohio EPA nor the Ohio Utility Group identified any particularly time-consuming issues relevant to the supplemental comment period, nor is EPA aware of any. The comment period now closes on September 8, 2014.

Dated: July 29, 2014.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2014–18833 Filed 8–7–14; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2014–0243; A–1–FRL–9913–08–Region 1]**

### Approval and Promulgation of Air Quality Implementation Plans; Maine; Volatile Organic Compound Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve four State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions establish Reasonably Available Control Technology (RACT) for two categories of volatile organic compound (VOC) sources and revise two existing VOC RACT regulations previously approved into Maine's SIP. The intended effect of this action is to propose approval of the requirements of the four submittals into the Maine SIP. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before September 8, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2014–0243 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–2014–0243,'' 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, 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–2014–0243. 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, Office of Ecosystem Protection, Air Quality Planning Unit, 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 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state's submittals are also available for public inspection during normal business hours, by appointment at the State Air Agency: Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

**FOR FURTHER INFORMATION CONTACT:** Anne K. McWilliams, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone (617) 918–1697, facsimile (617) 918–0697, email *mcwilliams.anne@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
II. What is included in Maine's submittals?
III. What is EPA's evaluation of Maine's submittals?
A. Chapter 159, Control of Volatile Organic Compounds From Adhesives and Sealants
B. Chapter 154, Control of Volatile Organic Compounds From Flexible Package Printing
C. Chapter 111, Petroleum Liquid Storage Vapor Controls
D. Chapter 112, Bulk Terminal Petroleum Liquid Transfer Requirements
IV. Proposed Action
V. Statutory and Executive Order Reviews

## I. Background and Purpose

In 1997, EPA revised the health-based National Ambient Air Quality Standard (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame.

On April 20, 2004, pursuant to the Federal Clean Air Act (the Act, or CAA), 42 U.S.C. 7401 *et seq.,* EPA designated portions of the country as being in nonattainment of the 1997 8-hour ozone NAAQS (69 FR 23858). In Maine two areas were designated as nonattainment for the 1997 ozone standard: The Portland, ME ozone nonattainment area, including Sagadahoc County and portions of York, Cumberland and Androscoggin Counties; and the Hancock, Knox, Lincoln and Waldo Cos. (Counties) ME ozone nonattainment area. The remainder of the State was designated as unclassifiable/attainment. The Portland, ME and Hancock, Knox, Lincoln and Waldo Cos., ME ozone nonattainment areas were subsequently redesignated to attainment effective January 10, 2007. See 71 FR 71489, December 11, 2006.

On March 27, 2008 (73 FR 16436), EPA issued a new 0.075 ppm 8-hour ozone NAAQS. Effective July 20, 2012 (77 FR 30088), EPA designated areas with respect to the 2008 ozone NAAQS. The entire state of Maine was designated unclassifiable/attainment for the 2008 ozone NAAQS.

Maine is part of the Ozone Transport Region (OTR) under Section 184(a) of the CAA. Sections 182(b)(2) and 184 of the CAA compel states with moderate and above ozone nonattainment areas, as well as areas in the OTR, respectively, to, among other things, submit a SIP revision requiring the implementation of RACT for all sources of VOC covered by a Control Techniques Guideline (CTG) issued by EPA and for all major sources of VOC. A CTG is a document which establishes a ''presumptive norm'' for RACT for a specific VOC source category.

## II. What is included in Maine's Submittals?

On June 20, 2014 and October 26, 2011, the Maine Department of Environmental Protection (herein ''ME DEP'') submitted revisions to its SIP containing new regulations to address two of EPA's CTG categories, Chapter 159 Control of Volatile Organic Compounds from Adhesives and Sealants (herein ''Chapter 159'') and Chapter 154 Control of Volatile Organic Compounds from Flexible Package Printing (herein ''Chapter 154''), respectively.

In addition, on October 13, 1999, ME DEP submitted revised Chapter 111 Petroleum Liquid Storage Vapor Controls (herein ''Chapter 111'') and on February 26, 1998, revised Chapter 112 Bulk Terminal Petroleum Liquid Transfer Requirements (herein ''Chapter 112''). Earlier versions of Chapters 111 and 112 had been previously approved by EPA into Maine's SIP.

## III. What is EPA's evaluation of Maine's submittals?

### *A. Chapter 159, Control of Volatile Organic Compounds From Adhesives and Sealants*

Maine's Chapter 159 applies to the sale, use, and manufacturing for use in Maine of adhesives, sealants, adhesive primer, and sealant primer used in product manufacturing, packaging, construction, and installation of metal, wood, rubber, plastic, ceramic, or fiberglass materials. However, adhesives, sealant applications, and products used for the following operations are exempt from the Chapter 159: tire repair; repair and manufacturing of undersea-based weapon systems; testing and evaluation associated with research and development; solvent welding operations for medical devices; plaque laminating operations; products or processes subject to other state rules; and low-VOC products (less than 20 grams/liter).

Pursuant to Chapter 159, on or after January 1, 2011, all applicable sources are required to either limit VOC emissions through the use of adhesives, sealants, and adhesive and sealant primers which meet specified VOC limits or the use of add-on control equipment with an overall control efficiency of 85%, with the exception of roofing adhesives and sealants which have a compliance date of on or after January 1, 2016. The regulation specifies VOC limits for aerosol adhesives, clean-up solvents, and surface preparation solvents. In addition, the new regulation specifies applications methods, as well as work practices for waste and cleaning materials, to further limit VOC emissions for industrial adhesive activities.

Maine's Chapter 159 is generally consistent with the recommendations for RACT found in EPA's CTG for Miscellaneous Industrial Adhesives (EPA–453/R–08–005, September 2008) and a model rule developed by the Ozone Transport Commission (OTC) in 2007. The exemptions contained in Chapter 159 described above are consistent with those recommended in the CTG. Although there may be minor differences in the terminology used to describe certain adhesive categories regulated in the CTG and Chapter 159, EPA is proposing to find that those differences are inconsequential due to the Maine rule's broader applicability. Maine's Chapter 159 is more comprehensive than the CTG in that it establishes VOC content limits for sealants and sealant primers (in addition to adhesives as covered by the CTG), regulates sellers and manufactures, not just appliers, of regulated adhesives, adhesive primers and sealants, and contains a VOC composite vapor pressure limit for cleaning materials. Therefore, EPA is proposing to approve Chapter 159 and to find that the rule satisfies RACT requirements for this source category.

### *B. Chapter 154, Control of Volatile Organic Compounds From Flexible Package Printing*

Maine's Chapter 154 applies to any flexible package printing press that has the potential to emit from a dryer, prior to controls, at least 25 tons per year of VOC from the use of inks, coatings and adhesives combined. On and after January 1, 2011, flexible package printing sources subject to the rule are required to limit VOC emissions by one or more of the following techniques: use of low VOC content materials; averaging of the VOC content materials to meet low-VOC content standards; or operating add-on VOC pollution control. The rule also contains recordkeeping, testing, and reporting requirements, as well as work practices for handling VOC-containing materials. Facilities with flexible package printing presses with a potential to emit of less than 25 tons per year of VOC from the use of inks, coatings and adhesives combined are only required to comply with the rule's recordkeeping and work practice requirements. Facilities with flexible package printing presses with a potential to emit of less than 25 tons per

year of VOC from the use of inks, coatings and adhesives combined and which are used solely for quality control/quality assurance and for research and development purposes, are required only to meet the rule's recordkeeping requirements.

Maine's Chapter 154 Flexible Package Printing rule is consistent with recommendations for RACT found in EPA's CTG for Flexible Package Printing (EPA–453/R–06–003, September 2006). Therefore, EPA is proposing to approve Chapter 154 and to find that Chapter 154 satisfies RACT requirements for this source category.

*C. Chapter 111, Petroleum Liquid Storage Vapor Controls*

Maine's Chapter 111 was originally approved into the Maine SIP on February 19, 1980 (see 45 FR 10766) and a revised version of the rule was approved by EPA on February 3, 1992 (see 57 FR 3946) as meeting RACT requirements.[1] Maine's October 13, 1999 submittal containing revised Chapter 111 decreases the petroleum storage vessel complete inspection (of cover and seal) frequency requirement from annually to once every ten years and each time the vessel is emptied and degassed, thereby reducing the overall VOC emissions from this activity.[2] The revised inspection schedule is consistent with the following EPA guidance document: ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology,'' Staff Working Draft, June 1992. The revised rule was also amended to prohibit the emptying and degassing of petroleum storage vessels, for the purpose of performing a complete inspection, on days for which ME DEP has issued an ozone health advisory between June 1 and August 31 each year beginning January 1, 2004. In addition, the revised rule increases the schedule for ''routine inspections'' conducted through roof hatches from once every six months to once every month.

CAA section 110(*l*) provides that EPA shall not approve any implementation plan revision if it would interfere with any applicable requirement concerning attainment and reasonable progress, or any other applicable requirement of the CAA, i.e. the SIP submittal must demonstrate anti-backsliding. The revision to Chapter 111 reduces the VOC emissions from petroleum storage vessels. Therefore, the anti-backsliding requirements of section 110(*l*) have been met. For all of the reasons discussed above, EPA is proposing to approve Maine's revised Chapter 111 Petroleum Liquid Storage Vapor Controls.

*D. Chapter 112, Bulk Terminal Petroleum Liquid Transfer Requirements*

Maine's Chapter 112 was originally approved into the Maine SIP on February 19, 1980 (see 45 FR 10766) and several updates to the rule have also been subsequently approved by EPA. In particular, a revised version of the rule was approved by EPA on February 3, 1992 (see 57 FR 3946) as meeting RACT requirements. The most recent approval of Chapter 112 occurred on October 15, 1996 (see 61 FR 53635). As noted in that approval, Maine's Chapter 112 is generally consistent with 40 CFR Part 60 Subpart XX and the following CTG: ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals'' (EPA–450/2–77–026). Maine's February 26, 1998 submittal, containing revised Chapter 112, includes a new, more stringent requirement for the following major sources of hazardous air pollutants (HAPs): (1) All existing and new bulk terminals and pipeline breakout stations that emit 10 tons/year or more of a HAP or 25 tons/year or more of a combination of HAPs; and (2) all existing and new bulk terminals and pipeline breakout stations that are located at plant sites that emit 10 tons/year or more of a HAP or 25 tons/year or more of a combination of HAPs. Emissions from a vapor collection and processing system (due to loading of gasoline cargo tanks) for major sources of HAPs are, under the revised rule, limited to 10 milligrams of total organic compound per liter of gasoline loaded, a reduction from the rule's previous limit of 35 milligrams of total organic compound per liter of gasoline loaded. The emission limit for sources that are not major sources of HAPs remains at 35 milligrams of total organic compound per liter of gasoline loaded. The revised rule also incorporates by reference the following federal maximum available control technologies (MACT) standards: ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)'' at 40 CFR Part 63, Subpart R; and ''National Emission Standards for Hazardous Air Pollutants Marine Tank Vessel Loading Operations'' at 40 CFR Part 63, Subpart Y.

Maine's revised Chapter 112 includes a more stringent VOC limit than the previous SIP-approved version of the rule (i.e. 10 versus 35 milligrams, respectively, for major sources of HAPs). Therefore, CAA section 110(*l*)'s anti-backsliding requirement has been met. For all of the reasons above, EPA is proposing to approve Maine's revised Chapter 112.

## IV. Proposed Action

EPA is proposing to approve and incorporate into the Maine SIP, Chapter 159, Control of Volatile Organic Compounds from Adhesives and Sealants, and Chapter 154, Control of Volatile Organic Compounds from Flexible Package Printing, as meeting RACT for the miscellaneous industrial adhesives and flexible package printing CTG categories, respectively. In addition, EPA is proposing to approve and incorporate into the Maine SIP revised Chapter 111, Petroleum Liquid Storage Vapor Controls, and revised Chapter 112, Bulk Terminal Petroleum Liquid Transfer Requirements, both of which are consistent with CAA requirements and with EPA guidance for reducing VOC emissions from petroleum liquid storage facilities and from bulk terminal petroleum liquid transfer operations, respectively.

## V. 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 proposed 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 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.*);

[1] EPA's February 3, 1992 rulemaking found that Maine's revised Chapters 111 and 112 met the VOC RACT ''fix-up'' requirements of the Clean Air Act Amendments of 1990 (Section 182(a)(2)(A)).

[2] The emptying of such tanks during inspections causes a release of VOCs. Therefore, minimizing the occurrence of such inspections reduces VOC emissions. For example, the EPA document ''Gasoline Distribution Industry—Stage 1—Background information for Promulgated Standards'' (November, 1994), notes that emptying and refilling a 150 foot diameter tank will generate approximately 7 tons of VOC emissions.

• 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.

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

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

**Authority:** 42 U.S.C. 7401 et seq.

Dated: July 29, 2014.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

[FR Doc. 2014–18832 Filed 8–7–14; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

**[EPA–HQ–OAR–2014–0575; FRL–9914–87–OAR]**

**RIN 2060–AS29**

## Regulation of Fuels and Fuel Additives: Extension of Compliance and Attest Engagement Reporting Deadlines for 2013 Renewable Fuel Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to extend two reporting deadlines for the 2013 compliance period under the Renewable Fuel Standard (RFS) program. This proposed action would specifically affect the annual compliance and attest engagement reporting requirement deadlines for regulated parties. The annual compliance reports and attest engagement reports for the 2013 RFS compliance period would not be due until 30 days and 90 days, respectively, following publication of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel in the **Federal Register**. This proposed action would ensure timely amendment of existing deadlines, before compliance obligations would otherwise go into effect. In the ''Rules and Regulations'' section of this **Federal Register**, we are extending the annual compliance and attest engagement reporting deadlines for the 2013 RFS compliance period as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** Written comments must be received on or before September 15, 2014.

*Hearing:* We will hold a public hearing on August 15, 2014 if one is requested by noon EDT of the preceding business day. The public hearing, if requested, will be held at the EPA National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105, beginning at 10:00 a.m. local time.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0575, 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–2014–0575. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information 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 the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*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. Why is the EPA issuing this proposed rule?

This document proposes to take action to extend certain reporting requirement deadlines for the 2013 RFS compliance period. We have also published a direct final rule in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in a subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

## II. Does this proposed action apply to me?

Entities potentially affected by this direct final 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. |
| 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 the EPA is now aware could be potentially 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.

## III. Background and Purpose

The EPA is proposing to amend existing regulatory deadlines for regulated parties under the RFS program regarding the submission of annual compliance reports and attest engagement reports for the 2013 RFS compliance period.

We received comments on our November 29, 2013 proposed rulemaking to establish the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel [1] reiterating the importance to obligated parties of knowing their RFS obligations for the 2014 RFS compliance period prior to the compliance demonstration deadline for the 2013 RFS compliance period. The EPA recognized the value of this timing to obligated parties in the 2013 RFS final rule, and for that reason delayed the normally applicable February 28 compliance demonstration deadline to June 30, 2014 for the 2013 RFS compliance period.[2] We reasoned at that time that an extension to June 30, 2014 would be sufficient in light of the expected date of issuance of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel.

Because the 2014 renewable fuel standards were not final at the time the annual compliance reports for the 2013 RFS compliance period were coming due, we further extended this reporting deadline until September 30, 2014 (as well as the associated deadline for attest engagement reports until January 30, 2015).[3] However, in light of the further delay in issuing the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel, we are proposing (with a parallel direct final rule) to provide an additional extension of the annual compliance and attest engagement reporting period for the 2013 RFS compliance period. Under this proposal, regulated parties would not have to submit annual compliance reports and attest engagement reports for the 2013 RFS compliance period until 30 days and 90 days, respectively, following publication of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel in the **Federal Register**.

[1] 78 FR 71732 (November 29, 2013).
[2] 78 FR 49794, 49800 (August 15, 2013).
[3] 79 FR 34242 (June 16, 2014).

## IV. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

There are no new information collection requirements associated with this proposed rulemaking. The extension of the existing regulatory deadlines for regulated parties under the RFS program would impose no 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 proposed 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 the 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 rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this 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 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, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would amend the existing regulatory deadlines for regulated parties under the RFS program to submit reports demonstrating their compliance with the 2013 RFS standards, and to submit corresponding attest engagement reports. This proposed action if finalized would ensure timely amendment of existing deadlines, before compliance obligations would otherwise go into effect. The impacts of the RFS program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this proposal would not impose any additional requirements on small entities beyond those already analyzed.

*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. Therefore, this proposed action is not subject to the requirements of sections 202 or 205 of the UMRA.

This proposed action is also not subject to the requirements of section 203 of UMRA because it contains no proposed 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 would merely extend the otherwise applicable reporting deadlines.

*E. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. It would 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 proposed action would amend the existing regulatory deadlines for regulated parties under the RFS program to submit reports demonstrating their compliance with the 2013 RFS standards, and to submit corresponding attest engagement reports. The proposed new deadlines would only apply to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this proposed rule.

*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 would 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 proposed action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets E.O. 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 E.O. has the potential to influence the regulation. This proposed action is not subject to E.O. 13045 because it would not establish an environmental standard intended to mitigate health or safety risks and because it would implement 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 proposed 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 would not likely have a significant adverse effect on the supply, distribution, or use of energy. This proposed action would simply amend certain reporting deadlines for regulated parties under the RFS program.

*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 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 proposed rulemaking does not involve technical standards. Therefore, the 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 (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would not affect the level of protection provided to human health or the environment. This proposed action would not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

**V. Statutory Authority**

Statutory authority for this action comes from sections 211 and 301(a) of the Clean Air Act, 42 U.S.C. 7545 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: July 31, 2014.

**Gina McCarthy,**

*Administrator.*

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 80—REGULATION OF FUELS AND FUELS ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C., 7414, 7521, 7542, 7545, and 7601(a).

### Subpart M—Renewable Fuel Standard

■ 2. Section 80.1451 is amended by revising paragraph (a)(1)(xiv) to read as follows:.

**§ 80.1451 What are the reporting requirements under the RFS program?**

(a) * * *

(1) * * *

(xiv) For the 2013 compliance year, annual compliance reports shall be submitted within 30 days after publication in the **Federal Register** of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel.

* * * * *

■ 3. Section 80.1464 is amended by revising paragraph (g) to read as follows:

**§ 80.1464 What are the attest engagement requirements under the RFS program?**

* * * * *

(g) For the 2013 compliance year, reports required under this section shall be submitted to the EPA within 90 days after publication in the **Federal Register** of the final rule establishing the 2014 renewable fuel percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel.

[FR Doc. 2014–18569 Filed 8–7–14; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1175]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On February 16, 2011, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** a proposed rule that contained an erroneous table. This document provides corrections to that table, to be used in lieu of the information published on February 16, 2011. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Montgomery County, Pennsylvania (All Jurisdictions).

**DATES:** Comments are to be submitted on or before November 6, 2014.

**ADDRESSES:** You may submit comments, identified by Docket No. FEMA–B–1175, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** FEMA publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

In the proposed rule published at 76 FR 8982–8984, in the February 16, 2011, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Montgomery County, Pennsylvania all Jurisdictions'' addressed the flooding sources: Blair Mill Run, Blair Mill Run Tributary, Huntingdon Valley Creek, Meadow Brook, Pennypack Creek, Pennypack Creek Branch, Pennypack Creek Tributary No. 1, Pine Run, Rapp Run, Sandy Run, Sandy Run Tributary No. 1, Sandy Run Tributary No. 1a

(downstream), Sandy Run Tributary No. 1a (upstream), Southampton Creek, Tributary No. 2 to Pine Run, and War Memorial Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for the flooding sources Sandy Run, Sandy Run Tributary No. 1 and Sandy Run Tributary No. 1a (downstream). In addition, the proposed modifications listed for Sandy Run Tributary No. 1a (upstream) has been removed from the table. FEMA is no longer proposing any flood elevation determination changes along Sandy Run Tributary No. 1a (upstream) as identified in the above-referenced rulemaking publication. In this document, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

**Correction**

In Proposed rule FR Doc. 2011–3420, beginning on page 8978 in the issue of February 16, 2011, make the following correction. On pages 8982–8984, correct the Montgomery County, Pennsylvania table as follows:

| Flooding source(s) | Location of referenced elevation** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Montgomery County, Pennsylvania (All Jurisdictions)** | | | | |
| Blair Mill Run | At the Pennypack Creek confluence | +212 | +211 | Borough of Hatboro, Township of Horsham, Township of Upper Moreland. |
| | At the downstream side of County Line Road | +259 | +261 | |
| Blair Mill Run Tributary | At the upstream side of West Monument Avenue | +227 | +228 | Borough of Hatboro. |
| | At the downstream side of East County Line Road | +247 | +252 | |
| Huntingdon Valley Creek | Approximately 800 feet downstream of Red Lion Road. | +119 | +120 | Borough of Bryn Athyn, Township of Lower Moreland. |
| | Approximately 0.9 mile upstream of Byberry Road | +264 | +267 | |
| Meadow Brook | At the Pennypack Creek confluence | +115 | +118 | Township of Abington, Township of Lower Moreland. |
| | Approximately 1,000 feet upstream of the most upstream State Highway 2017 crossing. | None | +287 | |
| Pennypack Creek | Approximately 1,200 feet downstream of Moredon Road. | +99 | +100 | Borough of Bryn Athyn, Borough of Hatboro, Township of Abington, Township of Horsham, Township of Lower Moreland, Township of Upper Dublin, Township of Upper Moreland. |
| | Approximately 1.0 mile upstream of Mann Road | None | +359 | |
| Pennypack Creek Branch | Approximately 400 feet downstream of Witmer Road | +299 | +298 | Township of Horsham. |
| | Approximately 0.7 mile upstream of Witmer Road | None | +362 | |
| Pennypack Creek Tributary No. 1. | At the Pennypack Creek confluence | +198 | +204 | Borough of Hatboro, Township of Horsham, Township of Upper Moreland. |
| | Approximately 0.7 mile upstream of Dresher Road | None | +341 | |
| Pine Run | At the upstream side of State Highway 309 | +171 | +176 | Township of Upper Dublin. |
| | Approximately 800 feet upstream of Dreshertown Road. | +231 | +239 | |
| Rapp Run | At the Pine Run confluence | +177 | +183 | Township of Upper Dublin. |
| | Approximately 0.5 mile upstream of the most upstream Lexington Drive crossing. | +351 | +355 | |
| Sandy Run | Approximately 300 feet downstream of Bethlehem Pike. | None | +159 | Township of Abington, Township of Springfield, Township of Upper Dublin, Township of Whitemarsh. |
| | Approximately 1,400 feet upstream of Roberta Avenue. | None | +339 | |
| Sandy Run Tributary No. 1 | Approximately 150 feet upstream of Johnston Avenue | +237 | +236 | Township of Abington. |
| | Approximately 2,000 feet upstream of Johnston Avenue. | None | +258 | |
| Sandy Run Tributary No. 1a (downstream). | Approximately 250 feet upstream of Fernwood Avenue. | +238 | +237 | Township of Abington. |

| Flooding source(s) | Location of referenced elevation** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| | Approximately 1,100 feet upstream of Fernwood Avenue. | None | +243 | |
| Southampton Creek | At the Pennypack Creek confluence | +176 | +177 | Borough of Bryn Athyn, Township of Lower Moreland, Township of Upper Moreland. |
| | At the downstream side of County Line Road | +184 | +187 | |
| Tributary No. 2 to Pine Run | At the Pine Run confluence | None | +202 | Township of Upper Dublin. |
| | Approximately 1.1 miles upstream of the Pine Run confluence. | None | +232 | |
| War Memorial Creek | At the Pennypack Creek confluence | +189 | +190 | Township of Upper Moreland. |
| | Approximately 700 feet upstream of Mineral Avenue | +265 | +267 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Maps (FIRMs) located at the community map repository (see below) for exact locations of all BFEs to be changed. Revised FIRMs may also be viewed online at *http://www.fema.gov/preliminaryfloodhazarddata.*

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**ADDRESSES**

**Borough of Bryn Athyn**
Maps are available for inspection at the Borough Hall, 2835 Buck Road, Bryn Athyn, PA 19009.

**Borough of Hatboro**
Maps are available for inspection at the Borough Hall, 414 South York Road, Hatboro, PA 19040.

**Township of Abington**
Maps are available for inspection at the Township Building, Engineer's Office, 1176 Old York Road, Abington, PA 19001.

**Township of Horsham**
Maps are available for inspection at the Township Municipal Building, 1025 Horsham Road, Horsham, PA 19044.

**Township of Lower Moreland**
Maps are available for inspection at the Lower Moreland Municipal Building, 640 Red Lion Road, Huntingdon Valley, PA 19006.

**Township of Springfield**
Maps are available for inspection at the Springfield Township Municipal Building, 1510 Paper Mill Road, Wyndmoor, PA 19038.

**Township of Upper Dublin**
Maps are available for inspection at the Upper Dublin Municipal Hall, 801 Loch Alsh Avenue, Fort Washington, PA 19034.

**Township of Upper Moreland**
Maps are available for inspection at the Upper Moreland Township Building, 117 Park Avenue, Willow Grove, PA 19090.

**Township of Whitemarsh**
Maps are available for inspection at the Whitemarsh Township Administrative Building, 616 Germantown Pike, Lafayette Hill, PA 19444.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Date: July 11, 2014.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2014–18101 Filed 8–7–14; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 226

**RIN 0648–XD415**

## Endangered and Threatened Species; Designation of Critical Habitat for Steller Sea Lions; Public Meeting

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

**ACTION:** Notice of public meeting; request for presentations.

**SUMMARY:** NMFS will host a meeting to elicit scientific information related to the designation of Steller sea lion critical habitat under the Endangered Species Act (ESA). NMFS is considering revisions to the critical habitat designation to take into account new information that has become available since NMFS designated critical habitat in 1993. This meeting will provide an opportunity for NMFS to receive presentations from the public concerning new and relevant scientific

information. NMFS requests that parties interested in presenting information pertaining to the identification of areas as critical habitat for the Western Distinct Population Segment (DPS) of Steller sea lion submit a statement of interest, including an abstract of the information to be presented.

**DATES:** The meeting will be held September 22, 2014, from 9:00 a.m.–5:00 p.m. Pacific Daylight Time. Statements of interest and abstracts must be received by 5:00 p.m. Alaska Daylight Time on August 29, 2014 to be considered for presentation during the meeting.

**ADDRESSES:** You may submit statements of interest in making a presentation and abstracts, identified by NOAA–NMFS–2014–0096, by either of the following methods:

Electronic Submissions: Submit all electronic statements of interest in making a presentation and abstracts via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0096,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your statement of interest in making a presentation and your abstract.

Mail: Submit written statements of interest in making a presentation and abstracts to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region, NMFS, Attn: Ellen Sebastian, P.O. Box 21668, Juneau, AK 99802–1668. Statements of interest in making a presentation and abstracts sent by any other method, to any other address or individual, or received after the end of the submission period, may not be considered by NMFS. All materials received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov.*

The meeting will be held at NMFS Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Seattle, WA 98115, in the Jim Traynor Conference Room. Information about designation of critical habitat under the ESA is available at: *http://www.fisheries.noaa.gov/pr/species/criticalhabitat.htm.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Lisa Rotterman, 907–271–1692.

**SUPPLEMENTARY INFORMATION:**

## Background

The Steller sea lion was originally listed as a threatened species under the ESA by an emergency interim rule on April 5, 1990 (55 FR 12645). NMFS published a final rule to list the Steller sea lion as a threatened species under the ESA on November 26, 1990 (55 FR 49204). NMFS designated critical habitat for the Steller sea lion on August 27, 1993 (58 FR 45269). On May 5, 1997 (62 FR 24345), based on demographic and genetic dissimilarities, NMFS identified two DPSs of Steller sea lions under the ESA: a western DPS and an eastern DPS. Due to persistent decline, the western DPS was reclassified as endangered, while the eastern DPS remained classified as threatened. On November 4, 2013, NMFS published a final rule to delist the eastern DPS (78 FR 66140). In that final rule, NMFS stated that ''NMFS will undertake a separate rulemaking to consider amendment to the existing critical habitat designation that takes into account any new and pertinent sources of information since the 1993 designation, including amending the critical habitat designation as appropriate to reflect the delisting of the eastern DPS.'' NMFS has begun a review of Steller sea lion critical habitat to determine if revision of the existing critical habitat is warranted.

Section 3 of the ESA defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed [under Section 4], on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Section 4 of the ESA requires the designation of critical habitat for threatened and endangered species and provides for the revision of critical habitat based on the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Critical habitat may only be designated in areas under U.S. jurisdiction (50 CFR 424.12(h)).

## Public Science Meeting

NMFS will hold a public meeting to elicit external scientific information that is relevant to NMFS's review of Steller sea lion critical habitat. The existing critical habitat designation for Steller sea lions was developed for the species throughout its range in the U.S. (58 FR 45269; August 27, 1993), encompassing what NMFS subsequently identified as two DPSs (62 FR 24345; May 5, 1997). Given the recent delisting of the eastern DPS, any revisions to critical habitat should be based upon the physical or biological features essential to the conservation of the endangered western DPS.

NMFS requests that parties interested in presenting information relevant to the identification of areas as critical habitat for the western DPS of Steller sea lion submit a statement of interest with a brief (one page or less) abstract of the type of information to be presented. Presentations must address scientific information that is germane to the identification of areas that meet the ESA's definition of critical habitat. Persons or groups proposing to present information that is not relevant to this topic will not be invited to make presentations.

Due to the limited time available for presentations, NMFS encourages individuals or groups that may have similar or related scientific information, or similar interpretations of the best available scientific information, to coordinate their proposed presentations into subject specific panels to present the information effectively and minimize redundancy. For example, a panel could be comprised of a team of scientists who have worked together in collaborative studies that address relevant questions, several fishing industry representatives, or several representatives of non-governmental organizations, with each participant addressing a different facet of the relevant scientific information.

NMFS will review the statements of interest, abstracts, and proposed panels that are submitted and will schedule the presentations so as to focus on the scientific information most relevant to the criteria for identifying critical habitat. The amount of time available per presenter or panel will depend on the number of persons and groups wishing to make presentations. NMFS will contact the proposed presenters in advance of the meeting to specify the amount of time available and the approximate schedule. During the meeting, presenters may provide additional written information to NMFS for consideration.

More information on the basis for NMFS's determination of critical habitat is available on the NMFS Web site (see **ADDRESSES**).

## Arrangements for Foreign Nationals

Individuals wishing to attend the meeting who are not citizens of the United States must make prior arrangements to be permitted entrance to the Alaska Fisheries Science Center (see **ADDRESSES**). Requests for such arrangements should be directed to Jennifer Ferdinand by email at

*jennifer.ferdinand@noaa.gov* by September 8, 2014.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jennifer Ferdinand, (206) 526–4076, at least 5 working days prior to the meeting date.

Dated: August 1, 2014.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2014–18822 Filed 8–7–14; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register

Vol. 79, No. 153

Friday, August 8, 2014

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 4, 2014.

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

Comments regarding this information collection received by September 8, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

#### National Agricultural Statistics Service

*Title:* 2014 Census of Horticultural Specialties.

*OMB Control Number:* 0535–0236.

*Summary of Collection:* The census of horticultural specialties is one of a series of census special studies for the Census of Agriculture which provides more detailed statistics relating to a specific subject. The census of horticultural specialties is an integral part of the 2012 Census of Agriculture and is authorized by the Food, Conservation, and Energy Act of 2008 (Title X—Horticulture and Organic Agriculture). Since 1950 the Census of Horticultural Specialties has been conducted approximately every 10 years to show how the industry has changed over time. It was last conducted in 2009 for the reference period of 2008. Growing data needs to make policy decisions concerning the horticulture industry have prompted a request from the Secretary of Agriculture and Congress for a 2014 Census of Horticulture. Horticultural crops are high value crops which farmers could grow to diversify their farming operations. Using data from the 2012 Census of Agriculture, NASS will collect information from every respondent who reported production and sales of $10,000 or more of horticultural specialty crops. In addition NASS also plans to contact all new operations that have begun producing horticultural specialty products since the completion of the 2012 Census of Agriculture.

*Need and Use of the Information:* NASS will collect information on the number and value of plants grown and sold, the value of land, buildings, machinery and equipment, selected production expenses, irrigation, marketing channels, hired labor, area used for production, and type of structure. Horticulture is one of the fastest growing segments in the agriculture sector. The primary objective of the horticultural specialties census is to obtain a comprehensive and detailed picture of the horticultural sector of the economy. Without the census of horticultural specialties, government policy makers and planners would lack valuable information needed to accomplish their missions.

This is a reinstatement with change, of the Census of Horticultural Specialties survey to be conducted as a follow-on survey to the 2012 Census of Agriculture.

*Description of Respondents:* Farms; Business or other for-profit.

*Number of Respondents:* 41,000.

*Frequency of Responses:* Reporting: One time.

*Total Burden Hours:* 52,933.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2014–18729 Filed 8–7–14; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 4, 2014.

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

Comments regarding this information collection received by September 8, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to

submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

### Animal and Plant Health Inspection Service

*Title:* Karnal Bunt; Revision of Regulations for Importing Wheat.

*OMB Control Number:* 0579–0240.

*Summary of Collection:* Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS), domestic Karnal bunt regulations are contained in Subpart-Karnal Bunt (7 CFR 301.89–1 through 301.89–16). Karnal bunt is a fungal disease of wheat. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed.

*Need and Use of the Information:* In order for APHIS to verify that the articles are being imported in compliance with the regulations, the articles would have to be accompanied by a phytosanitary certificate (PPQ Form 577) issued by the national plant protection organization of the region of origin. The certificate must include a declaration stating that the regulated articles originated in areas where Karnal bunt is not known to occur, as attested to either by survey resulting or by testing for bunted karnals or spores.

*Description of Respondents:* Business or other for-profit; Federal Government.

*Number of Respondents:* 500.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 600.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2014–18731 Filed 8–7–14; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

August 4, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

### Food and Nutrition Service

*Title:* Evaluation of the Pilot Project for Canned, Frozen, or Dried Fruits and Vegetables in the Fresh Fruit and Vegetable Program.

*OMB Control Number:* 0584–NEW.

*Summary of Collection:* Section 4214(c) of the Agriculture Act of 2014 calls for the Secretary of Agriculture to evaluate the Canned, Frozen, or Dried (CFD) Fruits and Vegetables pilot project in the Fresh Fruit and Vegetable Program (FFVP) to address the impact of giving high-need, low-income elementary schools greater flexibility to offer CFD fruits and vegetables in addition to fresh produce. Schools selected for the pilot—elementary schools in low-income areas that have difficulty accessing, preparing, or storing fresh produce—will design and implement their pilots to best suit their needs. The FFVP is intended to improve overall diet quality by teaching children more healthful eating habits.

*Need and Use of the Information:* The evaluation of the CFD pilot project has four broad study objectives: (1) To examine the impacts on student's fruit and vegetable consumption in pilot schools; (2) To describe the impacts of the pilot on school participants in FFVP; (3) To describe the implementation strategies used by schools; and (4) To describe the acceptance of the pilot by key stakeholders. The evaluation will provide the Food and Nutrition Service (FNS) with the data and essential information needed to answer the study's objectives and research questions.

*Description of Respondents:* Individuals or household; State, Local or Tribal Government.

*Number of Respondents:* 24,367.

*Frequency of Responses:* Reporting: Semi-annually; annually.

*Total Burden Hours:* 10,125.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2014–18727 Filed 8–7–14; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Intermountain Region, Boise National Forest, Idaho City Ranger District; Idaho; Becker Integrated Resource Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental consequences of implementing alternatives considered for the Becker Integrated Resource

Project. The 19,327 acre Becker project area falls within the Crooked River Watershed. The area is located approximately 18 miles northeast of Idaho City, Idaho, and about 48 miles northeast of Boise, Idaho, in Boise County. The primary travel routes in the project area include State Highway 21 and National Forest System (NFS) roads 336, 362, 384, 385, 393 and 394. The proposal includes 10,624 acres of vegetation management and fuels treatments, closing 24 miles of NFS roads to public motorized use, decommissioning an additional 30.8 miles of NFS and unauthorized roads, designating 23.7 miles of new motorized trail for vehicles less than or equal to 50 inches in width, authorizing 41.4 miles of non-motorized summer trails, authorizing 55.7 miles of non-motorized winter trails, including a winter motorized restriction area surrounding the winter non-motorized trails, and removing barriers on 23 culverts to improve fish passage. The project documents are available electronically on the project Web page located at: *www.fs.fed.us/nepa/nepa_project_exp.php?project=18922.*

**DATES:** Project scoping was initiated with publication of a legal notice in the newspaper of record, the *Idaho Statesman,* on May 7, 2014. This initial scoping period ended on June 9, 2014. Following review of comments received and additional review with the interdisciplinary team (IDT), the Responsible Official has decided to proceed with preparation of an EIS. As a result, additional comments concerning the scope of the analysis will be accepted for an additional 30 days following publication of this NOI. Comments must be received by September 8, 2014. The publication date in the **Federal Register** is the only means for calculating the comment period. The draft environmental impact statement is expected in December 2014, and the final environmental impact statement and Record of Decision (ROD) are expected in June 2015.

This project is being planned under authorization of the Pre-decisional Administrative Review Process defined by 36 CFR part 218. This new rule replaces the previous project decision appeal rules defined in 36 CFR part 215. The new rule provides the public an opportunity to comment and express concerns on projects before decisions are made, rather than after. The Forest Service believes this aligns with our collaborative approach to forest management and increases the likelihood of resolving those concerns, resulting in better, more informed decisions.

Individuals and entities who submit specific written comments at this stage and/or already provided comments during the earlier comment period from May 7 through June 9, 2014, will be eligible to object. An additional comment opportunity will also be provided during the comment period for review of the Draft EIS (DEIS) and those who provide specific written comments during this comment period will also be eligible to object. For more information on 36 CFR Part 218, see the **Federal Register**, Volume 78, No. 59, March 27, 2013

**ADDRESSES:** Written, facsimile, hand-delivered, verbal, and electronic comments concerning this project will be accepted. Specific written comments must be submitted to: Boise National Forest, Idaho City Ranger District, Attention: District Ranger, P.O. Box 129, Idaho City, ID 83631; or by fax to 208–392–6684. The office hours for those submitting hand-delivered comments are: 8 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. Oral comments may also be provided at the Idaho City Ranger District office during normal business hours via telephone 208–392–6681 or in person. However; please be aware that to have standing to object, specific written comments must be provided at some point during this comment period, the comment period on the DEIS, or previously provided during the initial scoping period initatied on May 7, 2014.

Comments may also be submitted through the Becker Integrated Resource Project Web page at *www.fs.fed.us/nepa/nepa_project_exp.php?project=18922.* To submit comments using the Web form select ''Comment on Project'' under ''Get Connected'' on the right panel of the project's Web page.

Email comments must be submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), Adobe (.pdf) and Word (.doc) to *comments-intermtn-boise-idaho-city@fs.fed.us.* Please put ''Becker Integrated Resource Project'' in the subject line of email comments. Comments must have an identifiable name attached or verification of identity will be required. A scanned signature may serve as verification on electronic comments.

Comments or requests received in response to this publication, including names and addresses of those who respond, will be part of the public record for this proposed action.

Comments received in response to this request will be available for public inspection on the ''Public Comment Reading Room'' at the project Web site: *www.fs.fed.us/nepa/nepa_project_exp.php?project=18922.*

**FOR FURTHER INFORMATION CONTACT:** Randall Hayman, Forest Planner, Boise National Forest at the email address above or by phone at 208–373–4157.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The 19,327-acre Becker project area falls within the Middle Crooked River Watershed (HUC 17050110503), formerly named the Beaver-Edna watershed, and Pikes Fork (HUC 17050110502) subwatersheds; both subwatersheds are part of the larger Crooked River Watershed. The area is located approximately 18 miles northeast of Idaho City, Idaho, and about 48 miles northeast of Boise, Idaho, in Boise County . The following primary drainages and streams are located in the project area: Crooked River, Whoop-Um-Up Creek, Lamar Creek, Beaver Creek, Pikes Fork Creek, Banner Creek, Little Beaver Creek, and Edna Creek. The Pilot Peak mountain landform lies in the southwest corner of the project area, State Highway 21 bisects the area, Banner Ridge lies along the north end, and Crooked River and Lamar Creek roughly form the southern boundary of the project area.

*Purpose and Need for Action:* Four purposes have been identified for the project: (1) Contribute to the restoration of low- to mid-elevation forests in the project area; forests that fall within the non-lethal and mixed1 fire regime. Modifying forest densities, tree size classes, and species composition and breaking-up the horizontal and vertical wildland fuel continuity will reduce the risk of uncharacteristic stand-replacement wildfire and improve forest resiliency. Moving conditions toward those that are more representative of the desired condition for the fire regimes in the project area will benefit wildlife habitat restoration, as well as provide greater assurance that forested overstory cover in this landscape, which attracts recreational users to the area, is sustained over time; (2) Improve watershed conditions by reducing motorized route-related impacts to water resources, fish, soil, and wildlife and associated habitats while providing for a safe and efficient transportation system necessary to meet long-term management needs. *(Travel Analysis Process Report for the Becker*

*Restoration Project* (USDA Forest Service, May 2014)); (3) Improve and enhance the quality and diversity of recreational opportunities in the Middle Crooked River and Pikes Fork subwatersheds by reducing risk of loss of forested overstory cover, providing for a variety of recreation experiences, and reducing the potential for conflicts between motorized and non-motorized recreational users; and (4) Support the local and regional economies by providing enhanced recreational opportunities by utilizing wood products from the suited timber base, and by implementing forest restoration activities.

*Proposed Action:* In the context of Boise National Forest Plan desired conditions (Forest Service 2010b, Appendices A and E), the cumulative effects of past and present disturbances, fire suppression, and management actions have resulted in departed forested stand and landscape patch conditions. These departed conditions have increased the risk of uncharacteristic forest stand-replacing wildfires; reduced quantity and quality of habitat for wildlife species of conservation concern associated with non-lethal fire regimes (e.g., white-headed woodpecker); and redistributed habitat for wildlife species whose source habitat is associated more with mixed1 fire regimes (e.g., flammulated owl) in areas where it historically would not have occurred. Habitat has generally increased in the mixed1 fire regime patches and decreased in the non-lethal patches.

To address Purpose #1, vegetation restoration utilizing (1) commercial timber harvest activities would be conducted on about 3,243 acres utilizing tractor and tractor/off-road jammer logging systems; (2) miscellaneous wood products would be removed through thinning on an additional 1,547 acres; and (3) non-commercial thinning of small diameter trees would occur on an additional 3,452 acres, mostly within existing plantations, with no product removal. Total acres proposed for mechanical vegetative treatment would be 8,242, of which about 25% would be within riparian conservation areas (RCAs) as defined in the Boise National Forest Plan, Appendix B. Approximately 5.7 miles of temporary roads are anticipated to be constructed to support commercial timber harvest activities.

Both activity fuel treatments (i.e., fuels resulting from mechanical treatments) and natural fuels treatments would occur on approximately 9,796 acres. Activity fuels treatments include combinations of (1) chip, lop and scatter, handpile and burn, and/or burn concentrations; (2) whole tree yard to landings, lop and scatter, handpile and burn and/or burn concentrations; and (3) yard bole material to landings, handpile and burn concentrations, and lop and scatter. Natural fuels treatments include both direct and indirect application of prescribed fire. Within 3–5 years following mechanical treatments and completion of initial activity fuel activities, follow-up restoration prescribed fire treatments are anticipated to be applied across approximately 10,624 acres of the 19,327 acre project area.

To address Purpose #2, approximately (1) 4.9 miles of NFS roads would be reconstructed; (2) 1.3 miles of new road would be constructed; (3) 3.9 miles of unauthorized routes would be added to the transportation system; (4) 23.3 miles of NFS roads and 7.5 miles of unauthorized routes would be decommissioned; and (5) 6.9 miles of NFS roads would be converted to trails. As a result of road treatments, the 78.1 miles of roads currently open to public use for full size vehicles would be reduced to 53 miles. However, as discussed under Purpose #3 below, 23.7 miles of new motorized trail would be developed and open to public motorized use for vehicles less than or equal to 50 inches in width. Thus, total miles of roads and trails open to public motorized use would be 76.4 miles, a net reduction of routes open to public motorized use of 1.4 miles from the current situation.

In addition to the road management activities identified above, 23 aquatic organism passage barriers (culverts within existing roads) would be treated to remove barriers. This includes removal or replacement of 7 culverts within priority critical bull trout habitat and another 15 culverts outside priority critical bull trout habitat. In addition, 1 culvert would be treated through outlet pool modification in order to eliminate barrier concerns.

To address Purpose #3, new motorized and non-motorized trail opportunities will be developed and/or authorized. These trail systems will take advantage of existing NFS roads and/or unauthorized routes to the extent practicable in order to minimize the need for new trail construction and associated disturbance. Overlap of the motorized and non-motorized system and shared use on NFS roads open to full size motor vehicle public use will be minimized to reduce potential user conflicts, user safety issues, and improve the overall quality of the recreation experience for all user groups. Specifically, (1) a new 23.7 mile motorized trail will be designated with supporting trailhead facilities; (2) 41.7 miles of summer non-motorized trails would be authorized; and (3) 55.7 miles of winter non-motorized trails would be authorized. To further reduce conflicts and potential safety issues between motorized and non-motorized winter recreationists and improve the quality of the overall quality of the non-motorized recreation experience within the project area, the winter motorized restriction area east of Highway 21 in the project area would be extended to areas adjacent to the non-motorized trail system west of Highway 21 and in the southern portion of the project area.

To address Purpose #4, several of the aspects of the proposed action will provide support to local and regional economies including (1) by accomplishing Purposes #1 and #3, improvements and sustainability of the recreational use and experience within the Becker project area will continue to provide recreational user support, resulting in both direct and indirect benefits to local and regional economies; (2) wood products will also be an output of accomplishing Purpose #1. Specifically, it is expected the following wood products would be generated, (a) 6–8 million board feet of sawlogs, (b) a quarter million board feet of post and pole material, (c) more than 1,700 cords of fuelwood, and (d) more than 42,000 tons of woody biomass would be provided; and (3) other restoration activities are anticipated to generate economic outputs to support local and regional economies. This includes contract work for (a) road realignment, construction, reconstruction, and maintenance; (b) motorized and non-motorized recreational trail realignment, construction, reconstruction, and maintenance; (c) aquatic organism passage culvert replacement, removal and/or improvements; (d) non-commercial tree thinning; (e) installation of road closure barriers (seasonal and long term); and (f) activity fuel treatments, both mechanical and prescribed fire.

In addition to the actions developed to specifically address Purposes #1 through #4, an amendment to the Forest Plan standard 0763 is proposed to (1) add a modification Visual Quality Objectives (VQOs) to the motorized trail proposed to be designated; (2) partial retention VQOs to the winter and summer non-motorized trails to be authorized; (3) partial retention VQOs around the recreational Yurts in the project area; and (4) change the foreground retention requirement along Highway 21 to partial retention to allow

for accomplishment of vegetation restoration activities.

*Possible Alternatives:* Additional alternatives may be developed that include one or more of the following components: (1) Adding acres for vegetation restoration over that identified in the proposed action in areas accessible from the existing transportation system to improve management efficiency and economic return to support other restoration work; (2) retention of larger diameter trees greater than or equal to 18 inches diameter, throughout the project area; (3) reducing the amount of soil, water and wildlife habitat impact by reducing the acres of ground base logging systems and converting those acres to helicopter yarding systems; (4) similarly, use helicopter yarding systems around the non-motorized summer trail system to reduce the need to re-open roads that have vegetated in and, in their current condition, provide for a quality recreational experience; (5) open access roads to the yurts for use by renters either seasonally or yearlong, that were closed under the proposed action; (6) develop the motorized trail for use by vehicles less than or equal to 60 inches in width, rather than limiting it to less than or equal to 50 inches in width; (7) eliminate the proposed motorized trail system to reduce impacts on soil, water, fish and wildlife habitat; (8) reroute proposed motorized trail locations out of RCAs to the extent practicable; (9) provide a greater separation between the motorized and non-motorized trail systems to minimize the noise impacts on the quality of the non-motorized recreation experience; and (10) include a seasonal closure from May 1 to June 15 to all mechanized equipment on seasonally closed motorized roads/trails and non-motorized trails east of Highway 21 and north of Beaver Creek to minimize disturbance to big game during the calving period.

*Responsible Official:* The Responsible Official is the Forest Supervisor for the Boise National Forest, Cecilia R. Seesholtz.

*Nature of Decision to be Made:* The six decisions to be made include: (1) Should vegetation maintenance and restoration treatments (mechanical and fire) in the Project area be implemented, and if so, which forested stands should be treated, and what silvicultural prescriptions and methods should be applied? (2) Should the transportation system be managed within the Project area as recommended in the *Travel Analysis Process Report for the Becker Restoration Project* (USDA Forest Service, May 2014), and if so, which road management treatments should be implemented? (3) Should recreation management activities in the Project area be implemented, and if so, which motorized and/or non-motorized proposed trails/trailhead improvements should be implemented, including: (a) Should the proposed motorized trail be designated as a motorized recreation trail per 36 CFR 212.51, subpart B, and if so, which portions and for what type of vehicle use? (b) Should the proposed non-motorized trails be authorized, and if so, which portions and for what type of recreation user? (c) Should motorized winter restrictions (i.e., area restriction) be added to the winter travel map per 36 CFR 212.51, subpart C, and if so, which portions? (4) Should culvert treatments be implemented to improve access to aquatic habitat in the Project area, and if so, which culverts should be removed or replaced? (5) What design features and/or mitigation measures should be applied to activities to mitigate undesirable effects? (6) Should Forest Plan standard 0763 be amended to add and/or modify VQOs around proposed trails and along Highway 21, and if so, which VQOs should be added and/or modified?

*Preliminary Issues:* Eleven preliminary issues have been identified: (1) Tractor-jammer logging destroys ground cover, exposes mineral soil to erosion, and compacts soils from reduced absorption and increased runoff. Logging systems that result in the lightest ecological impacts on the forest should be used (e.g. helicopter and cable or skyline systems); (2) Re-opening roads/trails used by mountain bikers, hikers, and equestrians, and staff to allow for log hauling and forest thinning, will change the road/trail surface, remove existing vegetation within the road prisms, changing their overall character. This will impact the quality of the recreation experience for the users of these trails; (3) Construction of new roads, including temporary roads, are not appropriate in already heavily roaded or degraded ecosystems; (4) Removal of trees greater than 18 inches in dbh, unless there are site-specific exceptions, may impact the retention and/or requirement of old forest habitat components such as snags, down trees and understory vegetation; (5) If the public access roads to the Skyline (Road 362F) and Stargaze (Road 394B) yurt summer parking spots are closed, summer use will drop dramatically if the public has to walk in 1.5 to 2 miles from Highway 21; (6) 50 inch width limit on proposed ATV trails does not take into account the increased popularity of UTV vehicles. UTV's are not limited to utilitarian duties any longer. Most manufacturers produce sport versions with high popularity. Most ATV users are migrating to UTV usage; (7) New trails in the RCA will impact riparian function and process, particularly given the existing high road densities in the project area; (8) Designation of a motorized trail that overlaps portions of the non-motorized trails to be authorized will result in user conflicts and reduce the quality of experience for the non-motorized users; (9) Designation of the proposed motorized trail will not be consistent with wildlife and aquatic resource objectives; (10) Use of the non-motorized trail system during the spring results in big game disturbance during critical periods (i.e., calving); and (11) Winter motorized travel restrictions should not be a part of this project. No evidence is shown that there is a need to designate winter non-motorized trails which include winter motorized travel restrictions in areas around those trails.

*Permits and Licenses that may be Required:* The following permits may be required to implement the Proposed Action under the Clean Water Act: (1) CWA Section 404 Permit from the U.S. Army Corps of Engineers; (2) Stream Alteration Permit from the Idaho Department of Water Resources; (3) Water Quality Standards Short Term Activity Exemption from the Idaho Department of Environmental Quality (IDEQ); (4) National Pollutant Discharge Elimination System (NPDES) permit from the U.S. Environmental Protection Agency; (5) CWA Section 401 Certification from IDEQ; (6) Conditional use permit and road maintenance agreement from affected County; and (7) Other permits from Idaho Transportation Department and/or other entities.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A Notice of Availability (NOA) will be published in the **Federal Register** and a legal notice will be published in the newspaper of record for the Boise National Forest, the *Idaho Statesman,* to inform the public when the DEIS is available for review and comment. The DEIS will be distributed to all parties who responded during the scoping period initiated on May 7, 2014, and in response to this NOI to prepare an EIS, or who otherwise notified the Agency at some point prior to release of the DEIS of their interest to receive information pertaining to this proposal.

The DEIS is expected to be published in December 2014. The comment period on the DEIS will end 45 days following the date of publication of the notice of availability (NOA) in the **Federal**

**Register**. The publication date in the **Federal Register** is the only means for calculating the comment period for the DEIS. The Final EIS and draft ROD are anticipated to be released in March 2014 for the objection filing period. The Final FEIS and ROD are anticipated to be released in June 2014.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the scoping, DEIS, or objection filing stage but that are not raised until after completion of the final environmental impact statement and final decision may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the formal comment periods identified above so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and are able to respond to them in the final environmental impact statement and decision.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible; to have standing to object during the objection filing period, specific written comments must be provided as defined at 36 CFR part 218. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 31, 2014.

**Cecilia R. Seesholtz,**

*Forest Supervisor, Boise National Forest.*

[FR Doc. 2014–18809 Filed 8–7–14; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers Used for Publication of Legal Notice in the Rocky Mountain Region, Which Includes Colorado, Kansas, Nebraska, and Parts of South Dakota and Wyoming

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Rocky Mountain Region will use to publish legal notices required under 36 CFR part 218 and 219. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for opportunities to comment or file an administrative review on USDA Forest Service proposals.

**DATES:** Publication of legal notices in the listed newspapers will begin on the date of this publication and continue until further notice.

**ADDRESSES:** USDA Forest Service, Rocky Mountain Region; ATTN: Regional Administrative Review Coordinator; 740 Simms Street, Golden, Colorado 80401.

**FOR FURTHER INFORMATION CONTACT:** Ken Tu, Regional Administrative Review Coordinator, 303–275–5156.

**SUPPLEMENTARY INFORMATION:** The administrative review procedures at 36 CFR 218 and 219 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR 218 and 219. In general, the notices will identify: The decision or project, by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or requests for administrative review. The date the notice is published will be used to establish the official date for the beginning of the comment or filing period. The newspapers to be used are as follows:

**Rocky Mountian Regional Office**

Regional Forester decisions affecting National Forest System lands in Colorado, Kansas, Nebraska and those portions of South Dakota and Wyoming within the Rocky Mountain Region: *The Denver Post,* published daily in Denver, Colorado.

**Arapaho and Roosevelt National Forests and Pawnee National Grassland, Colorado**

Forest Supervisor decisions: *Coloradoan,* published daily in Fort Collins, Colorado.

District Ranger decisions for Canyon Lakes District: *Coloradoan,* published daily in Fort Collins, Colorado.

District Ranger decisions for Pawnee District: *Greeley Tribune,* published daily in Greeley, Colorado.

District Ranger decisions for Boulder District: *Daily Camera,* published daily in Boulder, Colorado.

District Ranger decisions for Clear Creek District: *Clear Creek Courant,* published weekly in Idaho Springs, Colorado.

District Ranger decisions for Sulphur District: *Middle Park Times,* published weekly in Granby, Colorado.

**Bighorn National Forest, Wyoming**

Forest Supervisor decisions: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

*District Ranger Decisions*

*Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

**Black Hills National Forest, South Dakota and Eastern Wyoming**

Forest Supervisor decisions: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

District Ranger decision: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

**Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado**

Forest Supervisor decisions: *Grand Junction Daily Sentinel,* published daily in Grand Junction, Colorado.

District Ranger decisions for Grand Valley District: *Grand Junction Daily Sentinel,* published daily in Grand Junction, Colorado.

District Ranger decisions for Paonia District: *Delta County Independent,* published weekly in Delta, Colorado.

District Ranger decisions for Gunnison Districts: *Gunnison Country Times,* published weekly in Gunnison, Colorado.

District Ranger decisions for Norwood District: *Telluride Daily Planet,* published daily in Telluride, Colorado.

District Ranger decisions for Ouray District: *Montrose Daily Press,* published daily in Montrose, Colorado.

**Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Colorado and Wyoming**

Forest Supervisor decisions: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

District Ranger decisions for Laramie District: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

District Ranger decisions for Douglas District: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

District Ranger decisions for Brush Creek-Hayden District: *Rawlins Daily Times,* published daily in Rawlins, Carbon County, Wyoming.

District Ranger decisions for Hahns Peak-Bears Ears District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

District Ranger decisions for Yampa District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

District Ranger decisions for Parks District: *Jackson County Star,* published weekly in Walden, Jackson County, Colorado.

**Nebraska National Forest, Nebraska and South Dakota**

Forest Supervisor decisions: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

District Ranger decisions for Bessey District/Charles E. Bessey Tree Nursery: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

District Ranger decisions for Pine Ridge District: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

District Ranger decisions for Samuel R. McKelvie National Forest: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

District Ranger decisions for Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

District Ranger decisions for Fort Pierre National Grassland: *The Capital Journal,* published Monday through Friday in Pierre, Hughes County, South Dakota.

**Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, Colorado and Kansas**

Forest Supervisor decisions: *Pueblo Chieftain,* published daily in Pueblo, Colorado.

District Ranger decisions for San Carlos District: *Pueblo Chieftain,* published daily in Pueblo, Colorado.

District Ranger decisions for Comanche District-Carrizo Unit: *Plainsman Herald,* published weekly in Springfield, Colorado.

District Ranger decisions for Comanche District-Timpas Unit: *Tribune Democrat,* published daily in La Junta, Colorado.

District Ranger decisions for Cimarron District: The Elkhart *Tri-State News,* published weekly in Elkhart, Kansas.

District Ranger decisions for South Platte District: *News Press,* published weekly in Castle Rock, Colorado.

District Ranger decisions for Leadville District: *Herald Democrat,* published weekly in Leadville, Colorado.

District Ranger decisions for Salida District: *The Mountain Mail,* published daily in Salida, Colorado.

District Ranger decisions for South Park District: *Fairplay Flume,* published weekly in Bailey, Colorado.

District Ranger decisions for Pikes Peak District: *The Gazette,* published daily in Colorado Springs, Colorado.

**Rio Grande National Forest, Colorado**

Forest Supervisor decisions: *Valley Courier,* published Tuesday through Saturday in Alamosa, Colorado.

District Ranger decisions for all Districts: *Valley Courier,* published, published Tuesday through Saturday in Alamosa, Colorado.

**San Juan National Forest, Colorado**

Forest Supervisor decisions: *Durango Herald,* published daily in Durango, La Plata County, Colorado.

District Ranger decisions for Columbine and Pagosa Districts: *Durango Herald,* published daily in Durango, La Plata County, Colorado.

District Ranger decisions for Dolores District: *Cortez Journal,* published two times per week in Cortez, Montezuma County, Colorado.

**Shoshone National Forest, Wyoming**

Forest Supervisor decisions: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

District Ranger decisions for Clarks Fork District: *Powell Tribune,* published twice weekly in Powell, Park County, Wyoming.

District Ranger decisions for Wapiti and Greybull Districts: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

District Ranger decisions for Wind River District: *The Dubois Frontier,* published weekly in Dubois, Fremont County, Wyoming.

District Ranger decisions for Washakie District: *Lander Journal,* published twice weekly in Lander, Fremont County, Wyoming.

**White River National Forest, Colorado**

Forest Supervisor decisions: *The Glenwood Springs Post Independent,* published daily in Glenwood Springs, Garfield County, Colorado.

District Ranger decisions for Aspen-Sopris District: *Aspen Times,* published daily in Aspen, Pitkin County, Colorado.

District Ranger decisions for Blanco District: *Rio Blanco Herald Times,* published weekly in Meeker, Rio Blanco County, Colorado.

District Ranger decisions for Dillon District: *Summit Daily,* published daily in Frisco, Summit County, Colorado.

District Ranger decisions for Eagle-Holy Cross District: *Vail Daily,* published daily in Vail, Eagle County, Colorado.

District Ranger decisions for Rifle District: *Citizen Telegram,* published weekly in Rifle, Garfield County, Colorado.

Dated: July 30, 2014.

**Bill Bass,**

*Acting Deputy Regional Forester, Resources, Rocky Mountain Region.*

[FR Doc. 2014–18725 Filed 8–7–14; 8:45 am]

BILLING CODE 3410–11–P

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting

**DATE AND TIME:** Tuesday, August 12, 2014, 11:00 a.m. EDT.

**PLACE:** Broadcasting Board of Governors, Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

**SUBJECT:** Notice of Closed Meeting of the Broadcasting Board of Governors.

**SUMMARY:** The members of the Broadcasting Board of Governors (Board) will meet in a closed session to consider the appointment of the Director of Global Strategy for the Agency. This meeting will be closed to public observation pursuant to 5 U.S.C. 552b(c)(6) in order to protect the privacy interests of candidates considered but not selected for the position. In accordance with the Government in the Sunshine Act and BBG policies, the meeting will be recorded and a transcript of the proceedings, subject to the redaction of information protected by 5 U.S.C. 552b(c)(6), will be made available to the public. The publicly-releasable transcript will be available for download at *www.bbg.gov* within 21 days of the date of the meeting.

Information regarding member votes to close the meeting and expected attendees can also be found on the Agency's public Web site.

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

**Oanh Tran,**

*Director of Board Operations.*

[FR Doc. 2014–18911 Filed 8–6–14; 11:15 am]

**BILLING CODE 8610–01–P**

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting

**DATE AND TIME:** Wednesday, August 13, 2014, 9:00 a.m.–1:00 p.m. EDT.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

**SUBJECT:** Notice of Meeting of the Broadcasting Board of Governors.

**SUMMARY:** The Broadcasting Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its June 20, 2014 meeting and a resolution to change the BBG meeting date in October 2014. The Board will discuss and vote on FY 2015 regional strategies based on this year's strategy review and consider establishing new Board special committees. The Board will also receive a report by its Special Committee on the Future of Shortwave Broadcasting. Finally, the Board will receive a presentation providing an overview of Radio Free Europe/Radio Liberty and engage in a conversation with the Deputy National Security Adviser for Strategic Communication.

This meeting will also be available for public observation via streamed webcast, both live and on-demand, on the agency's public Web site at *www.bbg.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public Web site.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at *https://bbgboardmeetingaugust2014.eventbrite.com* by 12:00 p.m. (EDT) on August 12. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at *pubaff@bbg.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

**Oanh Tran,**

*Director of Board Operations.*

[FR Doc. 2014–18910 Filed 8–6–14; 11:15 am]

**BILLING CODE 8610–01–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:* Emergency Beacon Registrations.

*OMB Control Number:* 0648–0295.

*Form Number(s):* NA.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 234,386.

*Average Hours per Response:* 15 minutes.

*Burden Hours:* 58,597.

*Needs and Uses:* This request is for extension of a currently approved information collection.

An international system exists to use satellites to detect and locate ships, aircraft, and individuals in distress if they are equipped with an emergency radio beacon. Persons purchasing a digital distress beacon, operating in the frequency range of 406.000 to 406.100 MHz, must register it with NOAA. These requirements are contained in Federal Communications Commission (FCC) regulations at 47 CFR 80.1061, 47 CFR 87.199 and 47 CFR 95.1402. The data provided by registration can assist in identifying who is in distress and in suppression of false alarms.

*Affected Public:* Individuals or households.

*Frequency:* Biannually.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

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* or faxed to (202) 395–5806.

Dated: August 4, 2014.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–18753 Filed 8–7–14; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) 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:* Bureau of Economic Analysis (BEA), Commerce.

*Title:* Expenditures Incurred by Recipients of Biomedical Research Awards from the National Institutes of Health (NIH).

*OMB Control Number:* 0608–0069.

*Form Number:* None.

*Type of Request:* Regular submission (extension of a currently approved information collection).

*Number of Respondents:* 120.

*Average Hours per Response:* 16 hours is the average, but may vary among respondents because of differences in institution structure, size, and complexity.

*Estimated Total Annual Burden Hours:* 1,920 hours.

*Needs and Uses:* The survey obtains the distribution of expenditures incurred by recipients of biomedical research awards from the National Institutes of Health (NIH) and will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Biomedical Research and Development Price Index (BRDPI). The Bureau of Economic Analysis (BEA) of the Department of Commerce develops this index for NIH under a reimbursable contract. The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the biomedical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipients is currently the only means for updating the expenditure categories weights that are used to prepare the BRDPI.

A survey questionnaire with a cover letter that includes a brief description

of, and rationale for, the survey will be sent to potential respondents by the first week of October in 2014 and by August of 2015 and 2016. A report of the respondent's expenditures of the NIH award amounts, including NIH awards received as a sub-recipient from another institution, following the proposed format for expenditure categories attached to the survey's cover letter, will be requested to be returned no later than December 8, which in most years will be approximately 120 days after mailing. Survey respondents will be selected on the basis of award levels, which determine the weight of the respondent in the biomedical research and development price index. BEA proposes to survey 150 organizations that receive NIH biomedical research awards. This will include the top 100 organizations in total awards received; 40 additional organizations that are not primarily in the ''Research and Development (R&D) contracts'' category; and 10 additional organizations that are primarily in the ''R&D contracts'' category. Based on awards data for FY 2009 by type of organization, the top 100 organizations received $16.2 billion in awards (approximately 73 percent of total awards); the remaining awards-receiving organizations received $6.0 billion.

*Affected Public:* Universities or other organizations that are NIH award recipients.

*Frequency:* Annual.

*Respondent's Obligation:* Voluntary.

**Legal Authority:** 45 CFR subpart C, Post-Award Requirements, sections 74.21 and 74.53; 42 U.S.C. 282; Economy Act (31 U.S.C. 1535 and 1536); and 15 U.S.C. 1525.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

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* or faxed to (202) 395–5806.

Dated: August 5, 2014.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–18773 Filed 8–7–14; 8:45 am]

**BILLING CODE 3510–EA–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–850]**

### Certain Oil Country Tubular Goods From Taiwan: Amended Final Determination of Sales at Less Than Fair Value

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 18, 2014, the Department published its final determination of sales at less than fair value in the antidumping duty investigation of certain oil country tubular goods from Taiwan. The Department is amending its final determination to correct a ministerial error with respect to one respondent.

**DATES:** *Effective Date:* August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer or Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–3477, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 18, 2014, the Department published its final determination of sales at less than fair value in the antidumping duty investigation of certain oil country tubular goods from Taiwan.[1] On July 21, 2014, Tension Steel Industries Co., Ltd. (Tension), submitted a ministerial error allegation.

#### Scope of the Investigation

The merchandise covered by the investigation is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock.

Excluded from the scope of the investigation are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors. The merchandise subject to the investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the investigation may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

#### Amendment to the Final Determination

A ''ministerial error'' is defined under 19 CFR 351.224(f) as: An error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying,

[1] *See Certain Oil Country Tubular Goods From Taiwan: Final Determination of Sales at Less Than Fair Value,* 79 FR 41979 (July 18, 2014) (*Final Determination*).

duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. *See* also section 735(e) of the Tariff Act of 1930, as amended.

On July 21, 2014, Tension submitted a ministerial error allegation. After analyzing Tension's allegation, we agree with Tension that the Department committed a ministerial error within the meaning of 19 CFR 351.224(f) by using an incorrect variable name for U.S. rebates. Specifically, we meant to set certain U.S. rebates to zero but inadvertently did not because we made a typographical error in the variable name in the programming.[2] Correcting this error results in the weighted-average dumping margin for Tension changing from 2.52 percent to 2.34 percent.

**Amended Final Determination**

The Department determines that the following weighted-average dumping margins exist for the period July 1, 2012, through June 30, 2013:

| Manufacturer/Exporter | Weighted-average dumping margin (percent) |
|---|---|
| Chung Hung Steel Corp | [3] 0.00 |
| Tension Steel Industries Co., Ltd | 2.34 |
| All Others | 2.34 |

**Continuation of Suspension of Liquidation**

The Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain oil country tubular goods from Taiwan—with the exception of subject merchandise produced and exported by Chung Hung Steel Corp., for which we found no weighted average dumping margin—which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Final Determination.* With the exception of subject merchandise produced and exported by Chung Hung Steel Corp., we will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) The rate for Tension Steel Industries Co., Ltd., will be the rate we determined in this amended final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 2.34 percent, as discussed in the ''All Others Rate'' section, below. These suspension of liquidation instructions will remain in effect until further notice.

**All Others Rate**

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Because the margin for Chung Hung Steel Corp. was zero, we assigned as the all others rate the margin calculated for Tension, the only margin we calculated that was neither *de minimis* nor determined under section 776 of the Act; that rate is 2.34 percent.

**U.S. International Trade Commission Notification**

In accordance with section 735(d) of the Act, we notified the U.S. International Trade Commission (ITC) of the *Final Determination* and our amended final determination. As the *Final Determination* (and amended final determination) was affirmative and our amended preliminary determination was negative, in accordance with section 735(b)(3) of the Act, the ITC will determine within 75 days of the *Final Determination* whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This amended final determination notice is published in accordance with section 735(e) of the Act and 19 CFR 351.224(e).

Dated: July 31, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–18831 Filed 8–7–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] See Memorandum to File, ''Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods From Taiwan: Amended Final Determination Analysis Memorandum for Tension Steel Industries,'' dated concurrently with this memorandum for the specific SAS programming language correcting the error.

[3] The rate for Chung Hung Steel Corp. did not change from the *Final Determination.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Renewable Energy and Energy Efficiency Trade Policy Mission to Peru

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

**ACTION:** Amendment.

**SUMMARY:** The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is amending the Notice published at 79 FR 28683, May 19, 2014, for the Renewable Energy and Energy Efficiency Trade Policy Mission to Peru originally scheduled for November 12–13, 2014, in Lima, Peru, to revise the mission description to notify potential applicants that the mission will be led by an Executive official, rather than a senior official, of the Department of Commerce. In addition, the mission will now occur November 4–5, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ryan Mulholland, Senior Renewable Energy Trade Specialist, Office of Energy and Environmental Industries, Phone: (202) 482–4693, Email: *Ryan.Mulholland@trade.gov.*

**Catherine P. Vial,**

*Team Leader for Environmental Industries, Office of Energy and Environmental Industries.*

[FR Doc. 2014–18798 Filed 8–7–14; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Fishermen's Contingency Fund

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on

proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 7, 2014.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instruments and instructions should be directed to Paul Marx, (301) 427–8752 or *paul.marx@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for revisions to, and an extension of, a currently approved information collection. United States (U.S.) commercial fishermen may file claims for compensation for losses of, or damage to, fishing gear or vessels, plus 50 percent of resulting economic losses, attributable to oil and gas activities on the U.S. Outer Continental Shelf. To obtain compensation, applicants must comply with requirements set forth in 50 CFR part 296.

The requirements include a ''report'' within 15 days of the date the vessel first returns to port after the casualty incident to gain a presumption of eligible causation and an ''application'' within 90 days of when the applicant first became aware of the lost and/or damage.

The report is NOAA Form 88–166 and it requests identifying information such as: respondent's name; address; social security number; and casualty location. The information in the report is usually completed by NOAA during a telephone call with the respondent.

The application is NOAA Form 88–164 and it requires the respondent to provide information on the property and economic losses and/or damages including: type of damage; purchase date and price of lost/damaged gear; and income from recent fishing trips. It also includes an affidavit by which the applicant attests to the truthfulness of the claim.

The currently approved forms are being revised to improve the usability by allowing respondents to complete pdf versions of the forms as well as reducing the paper size from legal to letter. Prior sections that contained multiple questions have been separated to simplify the responses and to help ensure more complete and accurate responses. Because ''Loran C'' is no longer being used for locational coordinates, the term will be replaced with ''GPS'' for Global Positioning System. Clarification of some of the instructions will also be provided based on previous applicants' responses and submitted reports and applications.

## II. Method of Collection

Respondents may telephone NOAA and provide the information for the report verbally or submit a paper or electronic report. Respondents have a choice of either electronic or paper forms for the application.

## III. Data

*OMB Control Number:* 0648–0082.

*Form Number:* NOAA Forms 88–164, 88–166.

*Type of Review:* Revision and extension of a currently approved collection.

*Affected Public:* Individuals or households; business or other for-profit organizations.

*Estimated Number of Respondents:* 40.

*Estimated Time per Response:* 8 hours (15 minutes for a report and 7 hours, 45 minutes for an application).

*Estimated Total Annual Burden Hours:* 320.

*Estimated Total Annual Cost to Public:* $500 in recordkeeping/filing costs.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 4, 2014.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2014–18754 Filed 8–7–14; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD427**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Monkfish Committee and Monkfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Monday, August 25, 2014 at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Embassy Suites Philadelphia, 9000 Bartram Avenue, Philadelphia, PA 19153; telephone: (215) 365–4500; fax: (215) 365–3195.

*Council Address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Monkfish Oversight Committee will meet to discuss whether to continue working on measures already developed under Amendment 6, or develop other measures as part of the next monkfish action. The latest version of the Amendment 6 document includes modifications to existing monkfish landing limits and days-at-sea (DAS) measures, a new monkfish DAS leasing program, and an ITQ alternative. The committee will also consider other potential measures, raised in previous discussions and by members of the industry, that could be included in a future action. The committee will also discuss Monkfish priorities for 2015, including Research Set-Aside priorities.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens

Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 5, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–18782 Filed 8–7–14; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD428**

### Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

**ACTION:** Notice of public meetings of the Gulf of Mexico Fishery Management Council.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will hold meetings of the: Budget/Personnel, Administrative Policy, Red Drum, Reef Fish, Shrimp and Data Collection Management Committees; in conjunction with a meeting of the Full Council. The Council will hold a closed session. The Council will also hold a formal public comment session.

**DATES:** The Council meeting will be held from 1 p.m. on Monday, August 25 until 4:15 p.m. on Thursday, August 28, 2014.

**ADDRESSES:**

*Meeting Address:* The meeting will be held at the Beau Rivage Resort & Casino located at 875 Beach Boulevard, Biloxi, MS 39530; (228) 386–7111.

*Council Address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *doug.gregory@gulfcouncil.org.*

**SUPPLEMENTARY INFORMATION:** The items of discussion for each individual management committee agenda are as follows:

**Budget/Personnel Administrative Committee Agenda, Monday, August 25, 2014, 1 p.m. Until 2 p.m.**

1. Review and Approval of Multi-year Budget 2015–19

**Administrative Policy Administrative Committee Agenda, Monday, August 25, 2014, 2 p.m. Until 4 p.m.**

1. Discussion of Advisory Panel and Scientific and Statistical Committee Structure and Appointment Process
2. Discussion of Draft SOPPs Revisions

**Red Drum Management Committee Agenda, Monday, August 25, 2014, 4 p.m. Until 5 p.m.**

1. Review of Scoping Document for Recreational Red Drum Management

**Full Council, CLOSED SESSION, Monday, August 25, 2014; 5 p.m. Until 5:30 p.m.**

1. Appointments to the SEDAR Workshop Advisory Panel

—Recess—

**Reef Fish Management Committee Agenda, Tuesday, August 26, 2014, 8:30 a.m. Until 5:30 p.m.**

1. Discussion of Gag OFL and ABC
2. Final Action—Red Snapper Accountability Measures Framework Action
3. Review of the Socioeconomic SSC Summary
4. Discussion of Amendment 40—Recreational Red Snapper Sector Separation Revised Public Hearing Draft
5. Review of Draft Greater Amberjack ACL/ACT Framework Action
6. Review of Draft Red Grouper Bag Limit and Accountability Measures Framework Action
7. Discussion of IFQ Updates
8. Summary of the South Florida Regional Management Issues Meeting
9. Summaries of 2014 State Red Snapper Recreational Sampling Programs
10. Discussion of ABC Control Rule Revisions
11. Review of the Reef Fish Scientific and Statistical Committee Summary
12. Review of the Reef Fish Advisory Panel Summary
13. Review of the Red Snapper Advisory Panel Summary

—Recess—

**Reef Fish Management Committee Agenda, Wednesday, August 27, 2014, 8:30 a.m. Until 10:30 a.m.**

1. Continuation of Reef Fish Committee agenda

**Shrimp Management Committee, Wednesday, August 27, 2014, 10:30 a.m. Until 11:30 a.m.**

1. Review of Public Hearing Draft for Shrimp Amendment 16—Adjustments to the Annual Catch Limit and Accountability Measures for Royal Red Shrimp
2. SSC Recommendations on Public Hearing Draft Shrimp Amendment 15—Status Determination Criteria for Penaeid Shrimp and Adjustments to the Shrimp Framework Procedure

**Data Collection Management Committee, Wednesday, August 27, 2014, 11:30 a.m. Until 12 p.m.**

1. Commercial Electronic Log Pilot Program Update

—Recess—

**Council Session Agenda, Wednesday, August 27, 2014, 1:30 p.m. Until 8:30 p.m.**

1:30 p.m.–1:45 p.m.: Call to Order and Introductions, Adoption of Agenda, and Approval of Minutes

1:45 p.m.–4:45 p.m.: The Council will receive presentations on National Recreational Policy, Red Snapper Federal Violations, Individual Fishing Quota (IFQ) Undercover Operation, New Cooperative Research Effort, and an update on the RESTORE Act Science Program.

—Recess—

5:30 p.m.–8:30 p.m.: The Council will receive public testimony on Final Action—To Establish Recreational Accountability Measures for Red Snapper, Revised Public Hearing Draft Reef Fish Amendment 40—Sector Separation, and Public Hearing Draft Shrimp Amendment 15 to the Shrimp Status Determination Criteria for Penaeid Shrimp and Adjustments to the Shrimp Framework Procedure, and open testimony on any other fishery issues or concerns. People wishing to speak before the Council should complete a public comment card prior to the comment period. The Council will also review and vote on Exempted Fishing Permits (EFP), if any.

—Recess—

**Council Session Agenda, Thursday, August 28, 2014, 8:30 a.m. Until 4:15 p.m.**

8:30 a.m.–8:45 a.m.: The Council will receive a committee report from the Budget/Personnel Administrative Committee.
8:45 a.m.–9:45 a.m.: The Council will receive a committee report from the Administrative Committee.
9:45 a.m. –10:15 a.m.: The Council will receive a committee report from the Red Drum Management Committee.
10:15 a.m.–10:45 a.m.: The Council will receive a committee report from the Shrimp Management Committee.
10:45 a.m.–11 a.m.: The Council will receive a committee report from the Data Collection Administrative Committee.
11 a.m.–11:30 a.m.: The Council will review Other Business items; 2013/2014 Spiny Lobster Landings.
—Recess—
1 p.m.–4 p.m.: The Council will receive a committee report from the Reef Fish Management Committee.
4 p.m.–4:15 p.m.: The Committee will hold the Election of the Chair and Vice Chair.
—Adjourn—

The Agenda is subject to change, and the latest version will be posted on the Council's file server, which can be accessed by going to the Council Web site at *http://www.gulfcouncil.org* and clicking on FTP Server under Quick Links. For meeting materials see folder ''Briefing Books/Briefing Book 2014–08'' on Gulf Council file server. The username and password are both ''gulfguest''. The meetings will be webcast over the Internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: August 5, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–18783 Filed 8–7–14; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD420**

### New England Fishery Management Council; Public Meeting; Correction

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

**ACTION:** Notice of addendum to a public meeting.

**SUMMARY:** The New England Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will meet over two days to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Monday, August 25, 2014 at 9:30 a.m. and Tuesday, August 26, 2014 at 8:30 a.m.

**ADDRESSES:** The meeting will be held at the Courtyard by Marriott/Boston Logan Airport, 225 McClellan Highway, Boston, MA 02128; telephone: (617) 569–5250.

*Council Address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The original notice published in the **Federal Register** on August 4, 2014 (79 FR 45182). This notice adds an agenda item and changes the start time of the second day.

**Agenda Items**

The SSC will meet to (1) Review stock assessment information, consider information provided by the Groundfish PDT and develop ABC recommendations for Gulf of Maine haddock and Georges Bank yellowtail flounder for fishing years 2015–17; and (2) review stock assessment information, consider information provided by the Whiting PDT and develop ABC recommendations for northern and southern stocks of red hake, whiting (silver hake) and offshore hake for fishing years 2015–17. The committee may not complete all the ABC recommendations for these stocks at this meeting. Review ongoing work from the Council's Risk Policy Working Group; Provide input regarding the development of a Risk Policy Statement, which will articulate the Council's risk tolerance and serve as guidance for ABC (acceptable biological catch) control rules and annual catch limits (ACLs) for Council-managed species. The committee will address other business as necessary.

Although non-emergency issues not contained in this agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: August 5, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–18781 Filed 8–7–14; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### First Responder Network Authority Board Special Meeting

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Board of the First Responder Network Authority (FirstNet) will hold a Special Meeting via

telephone conference (teleconference) on August 15, 2014.

**DATES:** The Special Meeting will be held on Friday, August 15, 2014, from 11:00 a.m. to 12:00 p.m. Eastern Daylight Time.

**ADDRESSES:** The Special Meeting will be conducted via teleconference. Members of the public may listen to the meeting by dialing toll-free 1–888–282–1676 and using passcode ''FirstNet.'' Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Margaret Baldwin, 12201 Sunrise Valley Drive, Reston, VA 20192: telephone (703) 648–4161 or via email *margaret.baldwin@firstnet.gov.* Please direct media inquiries to Corey Ray at (703) 648–4109.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created FirstNet as an independent authority within the NTIA. The Act directs FirstNet to establish a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. As provided in section 4.08 of the FirstNet Bylaws, the Board through this Notice provides at least two days' notice of a Special Meeting of the Board to be held on August 15, 2014. The Board may, by a majority vote, close a portion of the Special Meeting as necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting FirstNet, including pending or potential litigation. See 47 U.S.C. 1424(e)(2).

*Matters To Be Considered:* FirstNet will post an agenda for the Special Meeting on its Web site at *www.firstnet.gov* prior to the meeting. The agenda topics are subject to change.

*Time and Date:* The Special Meeting will be held on August 15, 2014, from 11:00 a.m. to 12:00 p.m. Eastern Daylight Time. The times and dates are subject to change. Please refer to FirstNet's Web site at *www.firstnet.gov* for the most up-to-date information.

*Other Information:* The teleconference for the Special Meeting is open to the public. On the date and time of the Special Meeting, members of the public may call toll-free 1–888–282–1676 and use passcode ''FirstNet'' to listen to the meeting. If you experience technical difficulty, please contact Margaret Baldwin by telephone (703) 648–4161 or via email *margaret.baldwin@firstnet.gov.* Public access will be limited to listen-only. Due to the limited number of ports, attendance via teleconference will be on a first-come, first-served basis. The Special Meeting is accessible to people with disabilities. Individuals requiring accommodations are asked to notify Ms. Baldwin by telephone (703) 648–4161 or via email *margaret.baldwin@firstnet.gov,* at least two days (2) business days before the meeting.

*Records:* NTIA maintains records of all Board proceedings. Board minutes will be available at *http://www.ntia.doc.gov/category/firstnet.*

Dated: August 5, 2014.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2014–18768 Filed 8–7–14; 8:45 am]

BILLING CODE 3510–60–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Addition to the Procurement List.

**SUMMARY:** The Committee is proposing to add a product to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 9/8/2014.

**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 USC 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

### Addition

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice will be required to procure the product listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following product is proposed for addition to the Procurement List for production by the nonprofit agency listed:

**Product**

*NSN:* 8520–01–432–2618—Hand Soap, Liquid, Biobased, BX (4) 1 gallon jugs.
*NPA:* Lighthouse for the Blind, St. Louis.
*Contracting Activity:* General Services Administration, Fort Worth, TX.
*Coverage:* A-List for the Total Government Requirement as aggregated by the General Services Administration, Fort Worth, TX.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2014–18775 Filed 8–7–14; 8:45 am]

BILLING CODE 6353–01–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 services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

**DATES:** *Effective Date:* 9/8/2014.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

### Additions

On 5/23/2014 (79 FR 29747) and 6/13/2014 (33911–33912), 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 services and impact of the additions on the current or most recent contractors, the Committee has determined that the services 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 provide the services to the Government.
2. The action will result in authorizing small entities to provide the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the services proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following services are added to the Procurement List:

**Services**

*Service Type/Location:* Laundry Service, Veterans Affairs, Nebraska Western Iowa Health Care System and VA Central Iowa Health Care System, 2501 West 22nd Street, Sioux Falls, SD.
*NPA:* Goodwill Specialty Services, Inc., Omaha, NE.
*Contracting Activity:* Department of Veterans Affairs, 438-Sioux Falls VA Medical Center, Sioux Falls, SD.
*Service Type/Location:* Grounds Maintenance Service, Mission and Installation Contracting Command, 1792 12th Street, Fort Riley, KS.
*NPA:* Skookum Educational Programs, Bremerton, WA.
*Contracting Activity:* Dept. of the Army, W6QM MICC–FT RILEY, Fort Riley, KS.
*Service Type/Location:* Assembly, Kitting, Warehousing and Fulfillment Service, National Park Service, Interpretation and Education Division, 1849 C Street NW., Washington, DC.
*NPA:* Industries for the Blind, Inc., West Allis, WI.
*Contracting Activity:* Dept. of the Interior, National Park Service, NCR Regional Contracting, Washington, DC.

**Deletions**

On 6/27/2014 (79 FR 36477), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the products deleted from the Procurement List.

**End of Certification**

Accordingly, the following products are deleted from the Procurement List:

**Products**

*NSN:* 8115–00–511–5750—Box, Set-Up, Mailing Dental.
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD.
*Contracting Activity:* Defense Logistics Agency Troop Support, Philadelphia, PA.
*NSN:* 7530–01–515–7900—Paper, Printer, Ink Jet, Photo Quality, Double Side, Matte, Letter, 99 Bright White.
*NSN:* 7530–01–515–7471—Paper, Printer, Ink Jet, Photo Quality, 24 lb., Letter, 94 Bright White.
*NPA:* Wiscraft, Inc., Milwaukee, WI.
*Contracting Activity:* General Services Administration, New York, NY.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2014–18774 Filed 8–7–14; 8:45 am]

BILLING CODE 6353–01–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Segal AmeriCorps Education Award Matching Program Commitment Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Robert Bisi of CNCS at 202–606–6638 or email to *rbisi@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for CNCS, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Comments**

A 60-day Notice requesting public comment was published in the **Federal Register** on July 23, 2013. This comment period ended September 17, 2013. No public comments were received from this Notice.

*Description:* CNCS is seeking approval of Segal AmeriCorps Education Award Matching Program Commitment Form, which is used by institutions of higher education that provide incentives for AmeriCorps alumni such as matching the AmeriCorps Education Award and that request that their institution be listed on the Segal AmeriCorps Education Award Matching Program section of the CNCS Web site.

*Type of Review:* Renewal.

*Agency:* Corporation for National and Community Service.

*Title:* Segal AmeriCorps Education Award Matching Program Commitment Form.

*OMB Number:* 3045–0143.

*Agency Number:* None.

*Affected Public:* Institutions of higher education that provide incentives for AmeriCorps alumni such as matching the AmeriCorps Education Award and that request that their institution be listed on the Segal AmeriCorps Education Award Matching Program section of the Corporation for National and Community Service Web site.

*Total Respondents:* Two hundred colleges and universities.

*Frequency:* Once every five years.

*Average Time per Response:* Average 30 minutes.

*Estimated Total Burden Hours:* 100 total hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: August 4, 2014.

**Ted Miller,**

*Chief of External Affairs.*

[FR Doc. 2014–18776 Filed 8–7–14; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2013–OS–0237]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by September 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* Military OneSource Case Management System (CMS)—Intake; OMB Control Number 0704–XXXX.

*Type of Request:* New Collection.

*Number of Respondents:* 900,000.

*Responses per Respondent:* 1.

*Annual Responses:* 900,000.

*Average Burden per Response:* 3 minutes.

*Annual Burden Hours:* 45,000.

*Needs and Uses:* The information collection requirement is necessary to support the Military OneSource Case Management System which will document an individual's eligibility; identification of the caller's inquiry or issue to provide a warm hand-off, referral and/or requested information; the development towards a final solution and referral information. Records may be used as a management tool for statistical analysis, tracking, reporting, and evaluating program effectiveness and conducting research. Information about individuals indicating a threat to self or others will be reported to the appropriate authorities in accordance with DoD/Military Branch of Service and Component regulations and established protocols.

*Affected Public:* Individuals or households

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: August 5, 2014.

**Aaron Siegel,**

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

[FR Doc. 2014–18756 Filed 8–7–14; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DoD–2014–OS–0062]**

### National Environmental Policy Act Implementation Procedures

**AGENCY:** Missile Defense Agency, Department of Defense.

**ACTION:** Final guidance.

**SUMMARY:** The Missile Defense Agency (MDA or the Agency) is issuing procedures to implement the National Environmental Policy Act (NEPA), Executive Order (E.O.) 11514, and Council on Environmental Quality (CEQ) regulations on implementing NEPA.

**DATES:** This final guidance document is effective August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Sorrells, Chief, Environmental Management, at (256) 450–2677 or by email at *eric.sorrells@mda.mil.*

**SUPPLEMENTARY INFORMATION:** MDA published its proposed procedures to implement the National Environmental Policy Act (NEPA), Executive Order (E.O.) 11514, and Council on Environmental Quality (CEQ) regulations on implementing NEPA (Code of Federal Regulations (CFR) parts 1500–1508) in the **Federal Register** on May 7, 2014 (79 FR 26213–26223). The 30-day public comment period closed on June 6, 2014 and MDA did not receive any public comments.

MDA is responsible for developing, testing, and fielding an integrated, layered, Ballistic Missile Defense System (BMDS) to defend the United States, its deployed forces, allies, and friends against all ranges of enemy ballistic missiles in all phases of flight. Using complementary interceptors; land-, sea-, air-, and space-based sensors; and battle management, command and control, and communications systems, the planned BMDS is intended to engage and negate all classes and ranges of ballistic missile threats.

MDA and its predecessor organizations prepared several programmatic BMDS National Environmental Policy Act (NEPA) documents to analyze the environmental impacts of its actions. In addition, MDA has prepared or been a cooperating agency for over 70 environmental assessments (EAs) or environmental impact statements (EISs) for specific program activities. These NEPA documents cover activities including research and development, site preparation and construction,

maintenance and sustainment, manufacture of test articles (prototypes), test and evaluation, fielding of missile defense systems and components, and the ultimate decommissioning and disposal or transfer of BMDS components and assets at many DoD installations, other agency sites, and industrial sites around the globe. Additionally, MDA has carefully considered over 200 records of environmental consideration (RECs)/ records of categorical exclusion/Air Force Form 813s documenting the use of the respective military Service's Categorical Exclusions (CATEXs) for minor actions occurring on host installations or ranges.

As a DoD agency, the MDA does not own real property. Because most MDA actions typically occur on host military service installations or ranges, or other Federal agency properties, MDA has historically relied upon our host installation or Federal agency's NEPA implementation, including their implementing procedures and CATEXs, to address the environmental impacts of MDA actions.

With the issuance of CEQ guidance ''Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act'' (2010) and after consulting informally with the CEQ, MDA determined the need to establish NEPA implementing procedures and CATEXs specific to MDA projects and actions. The information that MDA assembled while developing our CATEXs is described in the ''Administrative Record for Missile Defense Agency Proposed Categorical Exclusions'' and is available on the MDA Web site at: *http://www.mda.mil//news/environmental_reports.html*.

MDA's CATEXs describe the categories of actions that the Agency determined will not normally have a potential significant effect, individually or cumulatively on the human environment; and together with these implementing procedures will guide MDA organizations in carrying out the procedural requirements of NEPA.

The text of the complete final Guidance document appears below.

Dated: August 4, 2014.

**Aaron Siegel,**

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

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MISSILE DEFENSE AGENCY NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES
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## The National Environmental Policy Act Procedures for the Missile Defense Agency

### *1. Purpose*

These procedures implement the provisions of the NEPA, 42 U.S.C. 4321 *et seq.* They adopt and supplement the CEQ regulations implementing NEPA, 40 CFR parts 1500–1508, by establishing policy, directing environmental planning, and assigning responsibilities in the MDA to prepare, review, and approve environmental documents that comply with NEPA.

### *2. Scope*

The policies and responsibilities in these procedures apply to activities conducted by MDA and its executing agents in the United States, its possessions, and territories. The potential environmental effects of MDA proposed activities in foreign countries and global commons will be considered in accordance with Executive Order 12114, ''Environmental Effects Abroad of Major Federal Activities,'' DoD directives, host nation final governing standards, overseas environmental baseline guidance documents, status of forces agreements, and other international agreements.

### *3. Policy*

(a) It is MDA policy regarding NEPA, consistent with our mission and regulations and the environmental laws and regulations of the United States, to: (1) Start the NEPA process at the earliest possible time as an effective decision-making tool while evaluating a proposed action; (2) develop and carefully consider a range of reasonable alternatives to achieve the proposed actions; (3) write environmental analyses in plain English; and (4) to the maximum extent practical: (i) Include pollution prevention alternatives, (ii) consider sustainable transportation, greenhouse gas emissions, and energy choices, and (iii) ensure that, consistent with other national policies and national security requirements, we use practical means and measures to protect, restore, and enhance the quality of the environment and mitigate adverse consequences. MDA lacks projects or programs where actions are planned by private applicants or other non-Federal entities. Therefore, these procedures do not include the provision (as specified at 40 CFR § 1501.2(d)) to account for actions planned by private applicants or other non-Federal entities.

(b) MDA will promote efficiency in its NEPA process through: (1) Being aware and involved with the MDA project advocate (or MDA proponent) in the NEPA process; (2) using programmatic analyses and ''tiering,'' where appropriate, to make sure that decisions are made at the right levels, eliminating repetitive discussion, considering cumulative effects, and focusing on issues that are important and appropriate for discussion at each level; (3) using scoping and public involvement processes to ensure the analysis of issues of interest to the public and/or important to decision making; (4) eliminating needless paperwork by focusing documents on the major environmental issues affecting those decisions, including the use of adoption or incorporation by reference of previous, relevant NEPA analyses prepared by other agencies; (5) early integration of the NEPA process into all aspects of MDA planning to prevent disruption in decision making; (6) partnering or coordinating with agencies, organizations, and individuals whose specialized expertise improves the NEPA process; (7) clear and concise communication of data, documentation, and information; and (8) execution of the NEPA compliance process within the framework of the MDA's Environmental Management System.

(c) MDA will periodically (at least every seven years) review the effectiveness of its NEPA program and these implementing procedures, the appropriateness and usefulness of our categorical exclusions (CATEXs), the accuracy of predicted findings of no significant impact, the effectiveness of mitigation, the ramifications of actions both individually and cumulatively, and

the currency of the BMDS 2008 Programmatic Environmental Impact Statement.

(d) MDA will post NEPA implementing procedures, CATEXs, and summary information on our use of CATEXs for proposed actions on its public Web site.

*4. Responsibilities*

(a) The MDA Director has overall authority to ensure MDA activities comply with NEPA and has final approval authority regarding EIS records of decision (RODs).

(b) The Agency Environmental Executive (EE) acts as the principal MDA advisor on NEPA-related requirements. The EE will: (1) Ensure NEPA compliance of MDA activities in accordance with MDA NEPA implementing procedures and other applicable NEPA guidance and regulations; (2) coordinate with MDA stakeholders for NEPA issues regarding program/element activities; (3) provide intra-agency and inter-agency liaison and coordination on NEPA-related matters; and (4) have signature authority for EA findings of no significant impact (FONSIs).

(c) The Chief, Environmental Management will: (1) Educate and train MDA staff to implement NEPA; (2) coordinate with MDA's EE to maintain a record of the MDA's environmental activities and advance the national environmental policy articulated in NEPA, other Federal statutes, regulations, and Executive Orders; (3) prepare MDA NEPA reviews; (4) submit **Federal Register** (FR) notices for draft and final NEPA documents (as appropriate); (5) represent the MDA in NEPA-related matters with outside groups; (6) ensure applicable NEPA requirements are met on schedule during planning for any MDA action; (7) coordinate NEPA compliance actions at the proposal stage with MDA organizations; (8) ensure required NEPA mitigation measures are performed; and (9) ensure all documents being prepared by MDA are properly cleared for public release prior to the release or posting of the documents on any publicly accessible Web site or location.

*5. Public Involvement*

MDA will make diligent efforts to involve the public in implementing its NEPA procedures in accordance with 40 CFR 1501.4(b), 1506.6 and part 1503. When developing a plan to include the public and affected parties in the environmental analysis process, MDA will consider the following factors: (1) The magnitude of the environmental considerations associated with the proposed action; (2) the extent of expected public interest; and (3) any relevant questions of national concern.

*6. Environmental Review Categories*

A proposed action may fall into these five broad categories for environmental review:

(a) *Exemption by law.* To use an exemption by law, the law must apply to MDA and must prohibit, exempt, or make impossible full compliance with NEPA.

(b) *Emergencies.* If an emergency requires MDA to take immediate actions for national defense or security or to protect life or property, the following provisions apply. (1) The responsible official may take actions necessary to control the immediate impacts of the emergency and are urgently needed to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the responsible official must take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical. (2) For emergency actions other than those actions in paragraph (b)(1), if the responsible official responding to the emergency and the Environmental Management Division jointly conclude the emergency actions qualify for a CATEX and do not involve extraordinary circumstances that prevent using a CATEX as defined in these procedures, no further analysis is required to comply with NEPA before proceeding with emergency actions. The Environmental Management Division will prepare a Record of Environmental Consideration (REC) to document this conclusion. (3) If the responsible official proposes emergency actions other than those in paragraph (b)(1), and the actions do not qualify for a CATEX but will not likely have significant environmental impacts, MDA will document that determination in an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared in accordance with these procedures. If the responsible official determines that the proposed emergency actions must be undertaken before preparing an EA and FONSI, the Chief, Environmental Management will consult with the MDA EE about alternative arrangements for NEPA compliance. The EE may grant emergency alternative arrangements that meet the intent of NEPA, to the extent possible. To the maximum extent practical, these alternative arrangements will ensure public notification and involvement. They will focus on minimizing the adverse environmental consequences of the MDA response action and emergency. Any alternative arrangements must be documented. The Chief, Environmental Management will inform the Council on Environmental Quality (CEQ) of these arrangements at the earliest opportunity. (4) If the responsible official proposes emergency actions other than those in paragraph (b)(1) and those actions are likely to have significant environmental impacts, then the Chief, Environmental Management must consult with CEQ about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

(c) *Categorical Exclusions (CATEXs).* These are categories of Agency actions (listed in Appendix B) that MDA has determined do not individually or cumulatively have a significant impact on the human environment. MDA may use CATEXs for a proposed action when there are no extraordinary circumstances that warrant further analysis in an EA or EIS.

MDA will document designated CATEXs in writing using a REC (Appendix C). An MDA REC is a signed statement submitted with project documentation that concisely documents that an MDA action has received environmental review. The REC briefly describes the proposed action and time period, identifies the MDA proponent and approving official(s), addresses the use of screening criteria, and demonstrates that a review was conducted to ensure that no extraordinary circumstances indicate the need for further analysis. Qualifications for a CATEX are described later in this section.

(d) *Environmental Assessment (EA).* Proposed MDA actions not covered in the first three categories must be analyzed to determine their potential environmental effects. An EA is used to determine whether to prepare an EIS or a FONSI (40 CFR §§ 1501.4 and 1508.9); however, MDA is not required to prepare an EA if we have decided to prepare an EIS. (See 40 CFR 1501.3(a)). The requirements for the EA are addressed later in these procedures.

(e) *Environmental Impact Statement (EIS).* When a proposed action has the potential for significant impacts or when an EA cannot support a FONSI, an EIS will be prepared (40 CFR 1501.4). An EIS is initiated by the notice of intent (NOI) and examines the potential significant environmental effects of the proposed action plus measures to mitigate those impacts. This process requires formal interaction with the public, a formal scoping process, specified timelines for public review of the documentation, and incorporation of

public comments as well as any comments made by Federal, State, local, and tribal agencies. Requirements for the EIS are addressed later in these procedures.

*7. CATEX*

(a) If the proposed action qualifies as a CATEX and the screening criteria are met, the action can proceed. Appendix B lists MDA's CATEXs. Appendix C shows an MDA REC form to be used to document designated CATEXs.

(b) MDA may use a CATEX only when the following screening criteria are met: (1) The proposed action is a Federal action over which we have primary responsibility and, as described in its entirety, is covered by one or more CATEXs listed in Appendix B; (2) the proposed action does not involve any of the extraordinary circumstances described in paragraph (d) below; and (3) the proposed action does not involve using unproven technology that could potentially result in unknown impacts.

(c) Applying a CATEX to an action does not eliminate the need to meet other statutory or regulatory requirements including general conformity, federally-listed threatened or endangered species or their designated critical habitat, historic and cultural preservation, and safe drinking water requirements or other applicable Federal, state, or local regulatory requirements.

(d) ''Extraordinary circumstances'' arise when a typically categorically-excluded action has the reasonable likelihood to result in individually or cumulatively significant impacts on public health, safety, or the environment, based on the specific situation where the CATEX is applied. Extraordinary circumstances that preclude using a CATEX include: (1) A reasonable likelihood the proposed action would result in uncertain, unique, or unknown environmental risks, or is scientifically controversial; (2) a reasonable likelihood the proposed action would establish precedents or commit MDA to future actions with potential for significant impacts; (3) a reasonable likelihood the proposed action would threaten to violate Federal, state, or local environmental laws; (4) a reasonable likelihood the proposed action would adversely affect environmentally sensitive resources, such as, but not limited to, Federally-listed threatened and endangered species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat, unless the impact was permitted, mitigated, or addressed through another environmental review process, for example, the Clean Water Act or Coastal Zone Management Act; (5) a reasonable likelihood the proposed action would adversely affect known national natural landmarks, or cultural or historic resources, including, but not limited to, property listed on or eligible for the National Register of Historic Places, unless the impact was permitted, mitigated, or addressed through another environmental review process, such as the National Historic Preservation Act; or (6) a reasonable likelihood of causing an increase in surface transportation congestion that would exceed capacity of the supporting infrastructure or otherwise cause significant impacts to the human environment.

(e) MDA will review its CATEXs at least every seven years to determine whether modifications, additions, or deletions are appropriate, based on our experience and determination that environmental impacts of certain activities are not significant. If MDA acquires new responsibilities through legislation or administrative restructuring, we may propose new or modified CATEXs after gaining sufficient experience with the new activities to make a reasoned determination that any resulting environmental impacts are not significant. MDA will submit recommendations for modifications, additions, or deletions to CEQ for informal consultation and discussion.

*8. Environmental Assessment (EA)*

(a) An EA is a concise public document agencies/services prepare to inform decision makers and determine if the proposed action has the potential to significantly impact the environment (which then would require the preparation of an EIS). In cases when no potentially significant impact is expected, an agency/service documents this determination with a FONSI. An EA may be prepared at any time to help agencies/services plan and make decisions. Typical MDA actions normally requiring an EA include: (1) New construction of facilities that involves more than five cumulative acres of new surface disturbance; (2) proposed actions that potentially result in significant changes to established land use; or (3) actions substantially altering ongoing MDA operations which could potentially lead directly, indirectly, or cumulatively to substantial environmental impacts.

(b) An EA is prepared to assess the extent of potential environmental impacts resulting from a proposed action and alternatives, and to determine whether or not the impacts are likely to be significant. The EA must include, at a minimum, the following information and analyses: (1) Purpose and need for the proposed action or activity; (2) description of the proposed action; (3) brief discussion of the alternatives considered, including the ''no action'' alternative and the ''proposed action;'' (4) brief discussion of the affected environment and region of influence; (5) analysis of the potential environmental impacts of the proposed action and alternatives; (6) list of preparers, agencies and persons consulted; and (7) references.

(c) The analysis of potential environmental impacts (item (b)(5) above) includes an assessment of the direct, indirect, and cumulative impacts that can reasonably be expected from taking the proposed action or reasonable alternatives. When there are direct or indirect effects on an aspect of the environment from the proposed action, then MDA must also consider cumulative effects. Cumulative effects are impacts on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by Federal agencies, non-Federal agencies and private parties must be included when considering cumulative effects, as specified in 40 CFR 1508.7.

(d) The analysis for an EA leads to a determination to either issue a FONSI or a NOI to prepare an EIS.

(e) MDA should coordinate preparing the EA with other agencies (e.g., Federal, state, local, or tribal governments) when the action involves resources they manage or protect. MDA may invite agencies with jurisdiction by law and with special expertise, to participate as cooperating agencies (40 CFR 1501.6, 1508.5, 1508.15, and 1508.26). Factors for determining whether to invite, decline, or end cooperating agency status are in Attachment 1 of the CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (January 30, 2002).

(f) MDA may request public involvement in preparing the EA or revising or supplementing the EA, or choose to involve the public after the EA is prepared. MDA may use scoping but, would not publish the notice in the FR unless the proposed action was of national interest. MDA will select the type and format for public involvement to best support on-time and meaningful public input and coordinate it with the

host range/installation where applicable.

*9. Finding of No Significant Impact (FONSI)*

(a) MDA will prepare a FONSI as specified in 40 CFR 1508.13 to briefly describe why a proposed action will not have a significant effect on the environment and thus will not require an EIS.

(b) MDA will make the proposed final EA and proposed FONSI available to the affected public, organizations, and individuals requesting them, and to whomever we have reason to believe is interested in the action through the various methods outlined in 40 CFR 1506.6 as we deem appropriate. The public, other Federal, tribal, and state agencies and other government entities will be given an opportunity to review and comment on the proposed final EA and unsigned FONSI. The time period for public review will reflect the magnitude of the proposed action and its potential for controversy about environmental effects. A 30-day public review is normal, unless it is unwarranted due to the limited scope of the proposed action and/or lack of potential controversy about environmental effects. MDA will make EAs and FONSIs available on our public Web site and provide an electronic copy upon request. When MDA determines that it will enhance the opportunity for public review, we will provide hard copies to local public libraries or other public depositories.

(c) After closure of the public review period and considering the comments received, the MDA Environmental Executive will determine whether to revise the EA, sign the FONSI, start preparing an EIS, or modify or stop considering the proposed action.

(d) MDA will make the final EA and signed FONSI available on our public Web site.

*10. Environmental Impact Statement (EIS)*

(a) Classes of activities that normally require an EIS (40 CFR 1501.4) are: (1) Construction and operations of a major new deployment site or test range, and (2) development, testing and employment of a major new missile defense technology with unknown or potentially significant effects on the environment.

(b) A draft and final EIS will include: (1) The purpose and need for the proposed action and reasonable alternatives (as specified in 40 CFR 1502.13); (2) reasonable alternatives, including the preferred alternative and no-action alternative and designation of the preferred alternative (as specified in 40 CFR 1502.14); (3) the environment affected or created by the alternatives (as specified in 40 CFR 1502.15); (4) the probable environmental impacts from alternatives including the proposed action and measures (if any) to minimize impacts (as specified in 40 CFR 1502.16); and (5) a list of the major preparers of the EIS (as specified in 40 CFR 1502.17). EIS scope and detail should be reasonably related to the scope and the probable environmental impacts of the proposed action and alternative actions (40 CFR part 1502).

(c) Once MDA decides to prepare an EIS, we will start scoping (as specified in 40 CFR 1501.7). During scoping, participants help identify the range of actions, alternatives and impacts to consider (40 CFR 1508.25). MDA will invite affected agencies and interested persons to help determine the significant issues and alternatives to be addressed. The scoping phase of the NEPA process, as part of project planning, will include identifying aspects of the proposal that may have a significant effect or involve controversy concerning environmental effects. Scoping will ensure the NEPA analyses are useful for the decision maker.

(d) As soon as practical after deciding to prepare an EIS and before scoping, MDA will publish a notice of intent (NOI) to prepare an EIS in the FR (as specified in 40 CFR 1501.7). This NOI (as specified in 40 CFR 1508.22) will describe the purpose and need for the proposed action, and any reasonable alternatives and potential environmental impacts associated with the action that are available at this early stage of the NEPA process. Those impacts that tentatively are determined not to be significant and not warrant discussion in detail in the EIS may be identified. If a public scoping meeting will be held, the notice will state when and where. The NOI will identify the MDA point of contact who can supply more information about the action and to whom comments should be sent. There will normally be a public input period of 30 days from the date of publication of the NOI in the FR to allow other interested agencies and the public an opportunity to review and comment. Based on input received, MDA will determine if any additions or modifications to the schedule or scope of the EIS are appropriate. MDA will consider, in scoping the NEPA analysis and developing a draft EIS, the extent to which the greenhouse gas emissions caused by a proposed action should be estimated and evaluated.

(e) Analyzing potential environmental impacts includes assessing the direct, indirect, and cumulative impacts that can reasonably be expected from taking the proposed action or reasonable alternatives. When there are direct or indirect effects on an aspect of the environment, then MDA must also consider cumulative effects. Cumulative effects are impacts on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by Federal and non-federal agencies and private parties must be included when considering cumulative effects (as specified in 40 CFR 1508.7).

(f) MDA should coordinate preparing the EIS with other agencies when the action involves resources they manage or protect. MDA generally will invite those agencies with jurisdiction by law to participate as cooperating agencies. MDA may also invite them if they lack such jurisdiction, in addition to other agencies with special expertise, as cooperating agencies (40 CFR 1501.6 and 1508.5). Factors for determining whether to invite, decline, or end cooperating agency status are in Attachment 1 of the CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (January 30, 2002).

10.1 Draft Environmental Impact Statement (DEIS)

(a) MDA will prepare a draft environmental impact statement (DEIS) (as specified in 40 CFR 1502.9) in the format recommended in the CEQ regulations at 40 CFR 1502.10 unless there is a compelling reason to use another format.

(b) MDA will electronically file the DEIS with the Environmental Protection Agency (EPA) and request comments from any Federal agency that has jurisdiction by law, the public, native American tribes, or other interested Federal, state, and local agencies (as specified in 40 CFR 1503.1). MDA will provide a minimum of 45 days for public comment on the DEIS. The comment period will begin on the day of publication of the EPA-issued Notice of Availability (NOA) in the FR (40 CFR 1506.10).

10.2 Final Environmental Impact Statements (FEIS)

After MDA internal approval, we will circulate the final environmental impact statement (FEIS) (as specified in 40 CFR 1502.19). MDA will transmit the FEIS to every person, organization, or agency from which we received substantive comments on the draft and file the FEIS

electronically with the EPA (40 CFR 1506.9).

*11. Record of Decision (ROD)*

(a) After filing the FEIS with the EPA, a ROD will be prepared (as specified in 40 CFR 1505.2) unless MDA announces that we are withdrawing the proposed action.

(b) MDA will make the ROD available on the MDA public Web site. MDA will also make the ROD available to the public through the various methods outlined in 40 CFR 1506.6, as appropriate.

(c) An action for which an EIS was approved will not start until: (1) 30 days after the EPA-issued notice of availability (NOA) that the final EIS was published in the FR; or (2) 90 days after the DEIS NOA was published in the FR by the EPA, whichever provides the public with the most notice.

*12. Memorandum for Record (MFR)*

When MDA reviews actions covered in an existing EA or EIS that we prepared, we may write a memorandum for record (MFR) to document that review. When MDA is a cooperating agency in preparing an EIS, we may adopt the lead agency's EIS without recirculating the EIS as a draft or as a final EIS. MDA may do this when, after an independent review, we conclude and document in an MFR that the lead agency adequately addressed the adopting agency's comments and suggestions. Similarly, when MDA is a cooperating agency in preparing an EA, we may adopt the EA without recirculating the EA when, after an independent review, we conclude and document in an MFR that the lead agency adequately addressed the adopting agency's comments and suggestions (CEQ Guidance Memorandum for Heads of Federal Department and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act, March 6, 2012; 40 CFR 1506.3).

*13. Administrative Record*

MDA must maintain the administrative record for the environmental analysis performed. The administrative record must be retained by MDA for seven years after completing the action, unless the action involves controversy concerning environmental effects or is of a nature that warrants keeping it longer. The administrative record includes all supporting documents and information used to make the decision. This administrative record should include, but is not limited to: (1) Maps and or documents relevant to developing an EA or EIS; (2) formal communication by a consulting or coordinating agency office; (3) studies and inventories of affected environmental resources; (4) correspondence with regulatory agencies; (5) correspondence with and comments from, private citizens, tribes, local governments, and other individuals and agencies contacted during public involvement; and (6) confirmation of publications and transcripts of any public hearing. MDA will prepare and maintain an index or table of contents for the administrative record.

*14. Mitigation and Monitoring*

(a) MDA will indicate whether mitigation measures (as described in 40 CFR 1508.20) will be implemented for the alternative selected in either the FONSI or ROD, what commitments MDA considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) Where possible and appropriate because of amount, MDA will include the cost of mitigation as a line item in the budget for a proposed project. Upon request, MDA will also make the results of mitigation monitoring available to the public.

(c) MDA may ''mitigate to insignificance'' potentially significant environmental impacts found during preparation of an EA, instead of preparing an EIS. The FONSI for the EA will include these mitigation measures, which will be carried out as the project is implemented. If, for any reason, MDA later abandons or does not meet the mitigation commitments upon which the FONSI relied, we will prepare a supplemental environmental document before continuing the project. If potentially significant environmental impacts might result from any project revisions, MDA will prepare an EIS if we used an EA for the decision to proceed, or we will prepare a supplemental EIS, if we used an EIS for the decision to proceed.

*15. Supplemental EAs or EISs*

(a) MDA will prepare a supplement to an EA or EIS in accordance with 40 CFR 1502.9(c), when there are substantial or significant new circumstances or information related to the proposed action, or to the environmental concerns of the proposed actions, which bear on the proposed action or its impacts. MDA may also prepare a supplement when the purposes of NEPA will be furthered by doing so.

(b) MDA prepares supplemental documents following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, we may choose to conduct scoping (40 CFR 1502.9(c)(4)).

(c) When a supplemental EA or EIS is prepared, MDA will issue a new FONSI or ROD as appropriate.

*16. Cooperating Agencies*

When MDA is the lead agency (40 CFR 1501.5), we will invite Federal agencies with jurisdiction by law to serve as cooperating agencies. MDA may invite Federal, tribal, state and local agencies with special expertise to serve as cooperating agencies. The roles of lead and cooperating agencies are found in 40 CFR 1501.5, 1501.6, and 1508.5, and the definitions of jurisdiction by law and special expertise are found at 40 CFR 1508.15 and 1508.5.

*17. Adoption of EA or EIS*

The MDA may adopt an EA or EIS, or portion thereof, prepared by another agency where the MDA proposed action is substantially the same as the action described in the EA, in accordance with CEQ Guidance Memorandum for Heads of Federal Departments and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act, March 6, 2012, or EIS, in accordance with 40 CFR 1506.3(b). MDA will independently review the EA or EIS and determine whether it is current, satisfies the requirements of NEPA, and covers the proposed action. If the actions covered by the original NEPA analysis and the MDA proposed action are substantially the same, and MDA was not a cooperating agency, then we will reissue the EA or EIS as a final document and prepare its own FONSI or ROD, as appropriate.

*18. Incorporation by Reference*

MDA will incorporate material by reference to reduce paperwork and bulk. MDA will incorporate previous NEPA analyses or relevant material in an EA or EIS by citing and briefly describing the material, and ensuring that any material incorporated by reference will be made reasonably available for inspection by potentially interested persons within the time allowed for comment either in the EA, EIS, or on our Web site as specified in 40 CFR 1502.21.

*19. Tiering*

MDA will use tiered environmental documents to eliminate repetitive discussions of the same issues and to focus on those issues relating to specific

MDA actions (40 CFR 1502.20 and 1508.28). If MDA adopts another Federal agency's environmental document, we may also tier our subsequent MDA environmental documents from the adopted document.

*20. Classified Actions*

(a) Classification of an action for national security does not relieve MDA from the requirements of NEPA. MDA will prepare, safeguard, and disseminate NEPA documents in accordance with MDA and DoD requirements for classified information (i.e., MDA Manual 5200.02–M ''Information Security Program,'' DoD Manual 5200.01 ''DoD Information Security Program,'' or current issuance).

(b) In accordance with DoD and MDA Security Policy, NEPA documents that include classified information/actions will be written so that the classified information/actions are included in separate appendix(es) so that the unclassified portions of the documents can be made available to the public.

(c) When classified information is such an integral part of the analysis of a proposal that MDA cannot produce a meaningful unclassified NEPA analysis, the MDA proponent, in consultation with the appropriate environmental offices, will form a team to review the classified NEPA analysis. This team will include environmental professionals to ensure the consideration of environmental effects is consistent with the letter and intent of NEPA, including public participation requirements for unclassified aspects.

*21. Actions Occurring on Host Installations or Ranges*

MDA as a tenant will work with the host agency/service to fulfill MDA and the host's implementing regulations (or procedures) and guidance in complying with NEPA and related Executive Orders. The specific requirements of the agency/service making a decision supported by the NEPA analysis and documentation will apply. If multiple agencies will use the NEPA analysis and documentation, then the process followed in developing it will comply with the most stringent requirement in the respective NEPA implementing procedures and regulations.

## Appendix A—Abbreviations and Acronyms

ACM Asbestos-containing material
ANSI American National Standards Institute
BMDS Ballistic Missile Defense System
CATEX Categorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
DEIS Draft Environmental Impact Statement
DPF Facilities, Military Construction, & Environmental Management Division
EA Environmental Assessment
EE Environmental Executive
EIS Environmental Impact Statement
E.O. Executive Order
EPA Environmental Protection Agency
FEIS Final Environmental Impact Statement
FR Federal Register
FONSI Finding of No Significant Impact
IEEE Institute of Electrical and Electronics Engineers
LBP Lead-based paint
MDA Missile Defense Agency
MFR Memorandum for Record
NEPA National Environmental Policy Act
NOA Notice of Availability
NOI Notice of Intent
OSHA Occupational Safety and Health Administration
PCB Polychlorinated biphenyl
RCRA Resource Conservation and Recovery Act
REC Record of Environmental Consideration
ROD Record of Decision
SPCC Spill Prevention, Control and Countermeasure
U.S.C. United State Code

## Appendix B—Categorical Exclusions (CATEXs)

Actions categorically excluded in the absence of extraordinary circumstances are listed below.

CATEX List:

B–1. Normal personnel, fiscal or budgeting, and administrative activities and decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and recordkeeping).

B–2. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents including those that implement without substantial change the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies.

B–3. Decreases, increases, relocation, and realignment of personnel into existing Federally-owned or commercially-leased space that does not involve a substantial change affecting the supporting infrastructure or use of space (e.g., no increase in traffic beyond the capacity of the supporting network to accommodate such an increase).

B–4. Routine procurement of goods and services conducted in accordance with applicable procurement regulations, Executive Orders, and policies to support operations and infrastructure, including routine utility services and contracts.

B–5. Administrative study efforts involving no commitment of resources other than personnel and funding allocations. If any of these study efforts result in proposals for further action, those proposals must be considered separately by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to: Studies to further administrative, personnel-related, architectural, engineering, safety, security, siting, and facility audit activities.

B–6. Studies, monitoring, data and sample collection, and information gathering that involve no permanent physical change to the environment. If any of these activities result in proposals for further action, those proposals must be considered by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to:

a. Surveys for threatened and endangered species, wildlife and wildlife habitat, historic properties and archeological sites; wetland delineations; minimal water, air, waste, material, and soil sampling (e.g., grab samples).

b. Vulnerability, risk, and structural integrity assessments of infrastructure.

c. Environmental Baseline Surveys or Environmental Condition of Property Surveys.

d. Topographical surveying and mapping that does not require cutting and/or removal of trees.

B–7. Sampling, well drilling and installation, analytical testing, site preparation, and minimally intrusive physical testing. These activities could involve minor clearing and grubbing or movement of heavy equipment such as drill rigs. If any of these actions result in proposals for further actions, those proposals must be considered by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to:

a. Sampling for asbestos-containing materials (ACMs), polychlorinated biphenyls (PCBs), and lead-based paint (LBP).

b. Topographical surveys and surveys for unexploded ordnance.

c. Minimally-intrusive geological, geophysical surveys, geo-technical activities, and seismic studies.

d. Minimally-intrusive sampling to determine if hazardous wastes, contaminants, pollutants, or special hazards are present.

e. Ground water monitoring wells, subsurface soil sampling, and soil borings (REC required).

B–8. Immediate response to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention, Control, and Countermeasure (SPCC) Plan or Spill Contingency Plan, or that is otherwise consistent with the requirements of the EPA National Contingency Plan.

B–9. Temporary use of transportable power generators or operational support equipment when located in a previously disturbed area and when operated in compliance with applicable regulatory requirements.

B–10. Routine movement, handling, use, and distribution of materials, including hazardous materials or wastes moved, handled, or distributed in accordance with applicable regulations, such as the Resource Conservation and Recovery Act (RCRA), Occupational Safety and Health Administration (OSHA), and Hazardous Materials Transportation Act (HMTA).

B–11. Routine movement of mobile test assets (such as ships, aircraft, mobile sensors, telemetry, etc.) for routine missile defense test and evaluation; repair, overhaul or maintenance; or home port reassignments where no new support facilities are required.

B–12. Activities and operations to be conducted in an existing non-historic structure which are within the scope of and are compatible with the present functional

use of the building, will not cause a substantial increase in waste discharged to the environment, will not result in substantially different waste discharges from current or previous activities, and emissions will remain within established permit limits, if any.

B–13. Acquisition, installation, modification, routine repair and replacement, and operation of utility (e.g., water, sewer, and electrical) and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing rights-of-way, easements, distribution systems, facilities, or previously disturbed land (REC required).

B–14. Acquisition, installation or minor relocation, operation and maintenance, or evaluation of physical security devices or controls to protect human or animal life and to enhance the physical security of existing critical assets in compliance with applicable Federal, tribal, state and local requirements to protect the environment. Examples include, but are not limited to:

a. Motion detection systems.

b. Raptor electrocution prevention devices.

c. Lighting.

d. Remote video surveillance systems.

e. Access controls.

f. Physical barriers, fences, grating, on or adjacent to existing facilities (REC required).

B–15. Maintenance of archaeological, historical, and endangered or threatened species avoidance markers, fencing, and signs.

B–16. Road or trail construction and repair on existing rights-of-ways or in previously disturbed areas which do not result in a change in functional use. Runoff, erosion, and sedimentation are controlled through implementation of best management practices (REC required).

B–17. Routine repair and maintenance of buildings, vessels, aircraft, grounds, and other facilities and equipment which do not result in a change in functional use or a significant impact on a historically significant element or setting. Examples include, but are not limited to: Repair of roofs, doors, windows, or fixtures, localized pest management, and minor erosion control measures.

B–18. New construction or equipment installation or alterations (interior and exterior) to or construction of an addition to an existing structure that is similar to existing land use if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. The following conditions must be met:

a. The structure and proposed use are compatible with applicable Federal, tribal, state, and local planning and zoning standards.

b. The site and scale of construction or improvement is consistent with those of existing, adjacent, or nearby buildings.

c. The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.).

This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste or hazardous waste (REC required).

B–19. Demolition of non-historic buildings, structures, or other improvements and repairs that result in disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of ACM, PCBs, LBP, and other special hazard items (REC required).

B–20. Research, testing, and operations conducted at existing facilities and plants or laboratories (including contractor-operated laboratories and plants) and in compliance with all applicable safety, environmental, and natural conservation laws. Examples include, but are not limited to: Wind tunnels, high-energy lasers, remote-sensing instruments, vacuum chambers, high-altitude simulator facilities, and propellant testing facilities.

B–21. Routine installation and use of radars, telemetry systems, communications equipment, and other essentially similar facilities and equipment within a launch facility, mobile platform, military installation, training area, or previously disturbed area that conform to current American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) guidelines for maximum permissible exposure to electromagnetic fields (REC required).

BILLING CODE 5001–06–P

MDA REC
Tracking Number:

## APPENDIX C

## MISSILE DEFENSE AGENCY
## RECORD OF ENVIRONMENTAL CONSIDERATION

INSTRUCTIONS: *Top section to be completed by Proponent; continue on separate sheets as necessary.*

Title of Proposed Action:

Purpose and Need for Action (*identify decision to be made)*:

Description of Proposed Action and Alternative *(provide sufficient detail for evaluation of the total action, including total acreage, clearing requirements, etc.)*:

Anticipated Start Date:

Duration of the Proposed Action:

Signature: _____ Date: _____
Proposed Action Proponent

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**To Be Completed by MDA Environmental Management**

Environmental Analysis Determination. MDA has determined the proposed action:

1. ☐ Qualifies for a Categorical Exclusion (CATEX) – See Attachment 1, MDA Environmental "Screening Checklist
   CATEX #:

2. ☐ Does not qualify for a CATEX: Further Environmental Analysis is required

List Applicable NEPA Documents:

Remarks:

Signature: _____ Date: _____
MDA Environmental Officer

**Attachment 1**
**MDA Environmental Screening**

A CATEX excludes a proposed action from further NEPA analysis. Do not use a CATEX if any of the following conditions are YES or UNKNOWN:

| YES | NO | UNKNOWN | Description of the Reasonable Likelihood of the Proposed Action's Effect |
|---|---|---|---|
| ☐ | ☐ | ☐ | 1. Significant impact on public health or safety? |
| ☐ | ☐ | ☐ | 2. Imposes uncertain, unique, or unknown environmental risks, or is scientifically controversial? |
| ☐ | ☐ | ☐ | 3. Establishes precedents or makes decisions in principle for future actions that have the potential for significant impacts? |
| ☐ | ☐ | ☐ | 4. Threatens a violation of Federal, state, or local environmental laws? |
| | | | 5. Involves an action that, as determined in coordination with the appropriate resource agency, may: |
| ☐ | ☐ | ☐ | a) Have an adverse effect on Federally listed endangered/ threatened species or marine mammals or their designated critical habitat? |
| ☐ | ☐ | ☐ | b) Have an adverse effect on coral reefs or Federally designated wilderness areas, wildlife refuges, marine sanctuaries, or parklands? |
| ☐ | ☐ | ☐ | c) Adversely affect the size, function, or biological value of wetlands and is not covered by a nationwide or regional permit? |
| ☐ | ☐ | ☐ | d) Have an adverse effect on archaeological resources or resources (including but not limited to ships, aircraft, vessels, and equipment) listed or determined eligible for listing on the National Register of Historic Places? |
| ☐ | ☐ | ☐ | e) Result in an uncontrolled or unpermitted release of hazardous substances or require a conformity determination under standards of the Clean Air Act General Conformity Rule? |
| ☐ | ☐ | ☐ | f) Have an adverse effect on water resources such as quality, quantity, floodplains, buffer zones, surface water, or ground water? |
| ☐ | ☐ | ☐ | 6. Impacts other resources not addressed above (i.e., Installation Resource Program, soils, geology, hazardous material/waste, or land use)? |
| ☐ | ☐ | ☐ | 7. Causes an increase in transportation congestion that will exceed capacity of the supporting infrastructure? |

[FR Doc. 2014–18730 Filed 8–7–14; 8:45 am]
BILLING CODE 5001–06–C

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Intent To Grant Exclusive Patent Licenses to III HOLDINGS 3, LLC; Wilmington, DE

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), the Department of the Army hereby gives notice of its intent to grant to III HOLDINGS 3, LLC; a corporation having its principle place of business at 2711 Centerville Rd., Suite 400, Wilmington, DE 19808, exclusive licenses relative to the following U.S. Patents and Patent Applications:

- 7,343,362; ''Low complexity classification from a single unattended ground sensor node''; 23 September 2004.
- 7,919,764; ''Method and apparatus for enhanced terahertz radiation from high stacking fault density''; 5 May 2009.
- 12/639279; ''Distributed Geospatial Communications System''; 16 December 2009.
- 8,269,200; ''Terahertz radiation device and method of generating terahertz radiation''; 8 March 2011.
- 7,233,142; ''Planer reader of non-erasable magnetic media and local permeability''; 2 September 2004.
- KR 10–2011–7017044; ''Distributed Geospatial Communications System''; 23 December 2009.
- IL 213603; ''Distributed Geospatial Communications System''; 21 July 2011.

**DATES:** The prospective exclusive licenses may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by the U.S. Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive licenses.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Send written objections to Thomas Mulkern, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: RDRL–DPP, B321, Aberdeen Proving Ground, MD 21005–5425.

**FOR FURTHER INFORMATION CONTACT:** Thomas Mulkern, (410) 278–0889.

**SUPPLEMENTARY INFORMATION:** None.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2014–18778 Filed 8–7–14; 8:45 am]

BILLING CODE 3710–08–P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Availability of a Final Environmental Impact Statement for the Proposed SR 1409 (Military Cutoff Road) Extension and Proposed US 17 Hampstead Bypass New Hanover and Pender Counties in North Carolina, NCDOT TIP Projects U–4751 and R–3300

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Availability.

**SUMMARY:** The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Division is issuing this notice to advise the public that a State of North Carolina funded Final Environmental Impact Statement (FEIS) has been prepared for a road improvement project starting at Military Cutoff Road in New Hanover County to north of Hampstead along US 17, Pender County, NC (TIP Projects U–4751 and R–3300).

**DATES:** Written comments on the FEIS will be received until September 8, 2014.

**ADDRESSES:** Mr. Brad Shaver, Regulatory Project Manager, Wilmington Regulatory Field Office, 69 Darlington Ave., Wilmington, NC 28403 or Mr. Jay McInnis, Project Engineer, North Carolina Department of Transportation, 1548 Mail Service Center, Raleigh, NC 27699–1548.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and FEIS can be directed to Mr. Brad Shaver, COE—Regulatory Project Manager, telephone: (910) 251–4611 or Mr. Jay McInnis Jr., P.E., NCDOT—Project Engineer, telephone: (919) 707–6029.

**SUPPLEMENTARY INFORMATION:** The COE in cooperation with the North Carolina Department of Transportation prepared a Draft Environmental Impact Statement (DEIS), originally published in 2011, on a proposal to make transportation improvements to the US 17 and Market Street (US 17 Business) corridor in northern New Hanover and southern Pender Counties. Two North Carolina Department of Transportation Improvement Program (TIPs U–4751 and R–3300) projects are being evaluated as part of the US 17 Corridor Study.

The purpose of the US 17 Corridor Study project is to improve the traffic carrying capacity and safety of the US 17 and Market Street corridor in the project area. The project study area is roughly bounded on the west by I–40, on the north by the Northeast Cape Fear River, Holly Shelter Game Lands to the east, and Market Street and US 17 to the south.

This project is being reviewed through the Merger 01 process designed to streamline the project development and permitting processes, agreed to by the COE, North Carolina Department of Environment and Natural Resources (Division of Water Quality, Division of Coastal Management), Federal Highway Administration (for this project not applicable), and the North Carolina Department of Transportation and supported by other stakeholder agencies and local units of government. The other partnering agencies include: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; N.C. Wildlife Resources Commission; N.C. Department of Cultural Resources; and the Wilmington Metropolitan Planning Organization. The Merger process provides a forum for appropriate agency representatives to discuss and reach consensus on ways to facilitate meeting the regulatory requirements of Section 404 of the Clean Water Act during the NEPA/SEPA decision-making phase of transportation projects.

Through input from the public and resource agencies the project was changed to include a second interchange at the northern terminus. These changes were considered substantial changes and the public was given opportunity again to comment through the release of a supplement Draft EIS published in October 2013. Comments were received on both the Draft and Supplement Draft EIS which have been addressed in this FEIS. The original Draft EIS, Supplement DEIS, and FEIS is available for review on the project Web page: *http://www.ncdot.gov/projects/US17HampsteadBypass/.*

Any person having difficulty in viewing the document online can contact the COE project manager or the NCDOT project manager for a CD copy of the document.

After distribution and review of Final EIS, the Applicant understands that the U.S. Army Corps of Engineers will issue a Record of Decision (ROD) for the

project at the time of permit application from the North Carolina Department of Transportation. The ROD will document the completion of the EIS process and will serve as a basis for permitting decisions by this federal agency.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the FEIS should be directed to the U.S. Army Corps of Engineers at the address provided. The Wilmington District will periodically issue Public Notices soliciting public and agency comment on the proposed action and alternatives to the proposed action as they are developed.

Dated: August 1, 2014.

**Henry Wicker,**

*Assistant Chief, Wilmington Regulatory Division.*

[FR Doc. 2014–18779 Filed 8–7–14; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Board on Coastal Engineering Research

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Advisory Committee meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research. This meeting is open to the public.

**DATES:** *Dates and Location:* The Board on Coastal Engineering Research will meet from 8:00 a.m. to 1:00 p.m. on September 9, 2014, and reconvene from 8:00 a.m. to 5:00 p.m. on September 10, 2014. Both sessions of the meeting will be held in the Observation Post, The Presidio, 211 Lincoln Boulevard, San Francisco, CA 94129. The Executive Session of the Board will convene from 8:00 a.m. to 11:00 a.m. on September 11, 2014, in the Lobby Conference Room, 1455 Market Street, San Francisco, CA 94103. All sessions are open to the public. For more information about the Board, please visit *http://chl.erdc.usace.army.mil/cerb.*

**FOR FURTHER INFORMATION CONTACT:** Colonel Jeffrey R. Eckstein, Designated Federal Officer (DFO) and Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, phone 601–634–2513, or *Jeffrey.R.Eckstein@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Board on Coastal Engineering Research provides broad policy guidance and reviews plans for the conduct of research and the development of research projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers.

*Purpose of the Meeting:* The theme of the meeting is Coastal System Resiliency—Linking Navigation Dredging, Beneficial Use, Ecosystem Restoration and Coastal Storm Risk Management. The purpose of the meeting is to review the coastal engineering challenges within the southwest Pacific coastal region, focusing on regional sediment management and the beneficial (re)use of dredged material to improve the resilience of our coastal systems and to identify research and technology that is needed to help Districts and the Nation meet those challenges.

*Agenda:* On Tuesday morning, September 9, 2014, panel presentations will deal with the California Coastal Systems. Presentations will include Ocean Protection Council—West Coast Governor's Agreement; California Coastal Sediment Master Plan/Coastal Sediment Management Workgroup/Highlight Regional Sediment Management Plans Collectively; San Francisco Bay Sediment Budgets and Sand Mining; California Coastal Analysis and Mapping Project, Open Pacific Coast Study; Application of Engineer Research and Development Center (ERDC) Tools for Sustainable West Coast Projects; and Community Exposure to Tsunami Hazards in California. There will be an optional field trip Tuesday afternoon, which is open to the public.

On Wednesday morning, September 10, 2014, the Board will reconvene to discuss Innovative Dredge Material Management and Coastal System Resiliency. Presentations will include Ocean Beach Nearshore Placement; Fine-Grained Sediment in Coastal Sediment Management: Deal Breaker or Deal Maker; Long-Term Management Strategy Modeling for Optimization of Dredged Material Placement; North Atlantic Coast Comprehensive Study (NACCS) Update; Coastal Resilience: The Environment, Infrastructure, and Human Systems, Outcomes and Actions of the May Conference; and Best Practices for Sustainable and Resilient Coastal Development through Consolidation of Local Sea Level Dynamics. The afternoon session continues with the Coastal System Resiliency panel. Presentations include Climate Change and Climate Change Adaptation; Past and Future of Nearshore Processes Research, Workshop Results; California Coastal Commission—Sea Level Rise; and The CERB Resilience Charge: A Framework for Quantifying Resilient Coastal Systems.

The Board will meet in Executive Session to discuss ongoing initiatives and future actions on Thursday morning, September 11, 2014.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public. Because seating capacity is limited, advance registration is required. Registration can be accomplished as set forth below. Oral participation by the public is scheduled for 4:00 p.m. on Wednesday, September 10, 2014. The Observation Post is fully handicap accessible. Transportation will be provided from the Sheraton Fisherman's Wharf, 2500 Mason Street, San Francisco, CA, to the Observation Post. Metered parking is available at the Observation Post, Presidio. For additional information about public access procedures, please contact Colonel Eckstein, the Board's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Registration:* Individuals who wish to attend the meeting of the Board must register with the DFO by email, the preferred method of contact, no later than September 2, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section, above. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

*Written Comments and Statements:* Pursuant to 41 CFR 102–3.015(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments

or statements should be submitted to Colonel Jeffrey R. Eckstein, DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section above. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

*Verbal Comments:* Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

**Jeffrey R. Eckstein,**

*Colonel, Corps of Engineers, Designated Federal Officer.*

[FR Doc. 2014–18767 Filed 8–7–14; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

### Annual Notice of Interest Rates of Federal Student Loans Made Under the Federal Family Education Loan Program Prior to July 1, 2010

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.032.

**SUMMARY:** In accordance with section 427A of the Higher Education Act of 1965, as amended, the Chief Operating Officer for Federal Student Aid announces the interest rates for the period July 1, 2014, through June 30, 2015, for certain loans made under the Federal Family Education Loan (FFEL) Program prior to July 1, 2010. The Chief Operating Officer takes this action to give notice of FFEL Program loan interest rates to the public.

**DATES:** This notice is effective August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ian Foss, U.S. Department of Education, 830 First Street NE., Room 114I1, Washington, DC 20202. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov.*

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.

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**.

**SUPPLEMENTARY INFORMATION:** Section 427A of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1077a), provides formulas for determining the interest rates charged to borrowers on loans made under the Federal Family Education Loan (FFEL) Program, including Federal Subsidized and Unsubsidized Stafford Loans, Federal PLUS Loans, and Federal Consolidation Loans.

The FFEL Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the FFEL Program before July 1, 2006, have variable interest rates that change each year. In most cases, the variable interest rate formula that applies to a particular loan usually depends on the date of the first disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year.

Under section 427A(k) of the HEA, FFEL Program loans first disbursed on or after July 1, 2006, have a fixed interest rate.

In the case of some Federal Consolidation Loans, the interest rate is determined by the date on which the Federal Consolidation Loan application was received. Federal Consolidation Loans for which the application was received on or after October 1, 1998, have a fixed interest rate. This fixed rate is based on the weighted average of the loans that are consolidated, rounded up to the nearest higher 1/8 of one percent up to a maximum rate of 8.25 percent.

FFEL variable interest rates are based on formulas that use the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year plus a statutorily established add-on. These formulas apply to: All Federal Subsidized and Unsubsidized Stafford Loans first disbursed before October 1, 1992, that have been converted to variable rate loans; all Federal Subsidized and Unsubsidized Stafford Loans first disbursed on or after October 1, 1992, and before July 1, 2006; Federal PLUS Loans first disbursed on or after July 1, 1998, and before July 1, 2006; and Federal Consolidation Loans for which the Federal Consolidation Loan application was received on or after November 13, 1997, and before October 1, 1998. In each case, the calculated rate is capped by a maximum interest rate. The bond equivalent rate of the 91-day Treasury bills auctioned on May 27, 2014, which is used to calculate the interest rates on these loans, is 0.03 percent.

For Federal PLUS loans first disbursed before July 1, 1998, the interest rate is based on the weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System on the last day of the calendar week ending on or before June 26 of each year, plus a statutory add-on percentage. The calculated rate is capped by a maximum interest rate. The weekly average of the one-year constant maturity Treasury yield published on June 20, 2014, which is used to calculate the interest rate on these loans, is 0.10 percent.

This notice includes five charts containing specific information on the calculation of interest rates for loans made under the FFEL Program:

Chart 1 contains information on the interest rates for Federal Subsidized and Unsubsidized Stafford Loans that were made as fixed-rate loans, but were subsequently converted to variable-rate loans.

Chart 2 contains information on the interest rates for variable-rate Federal Subsidized and Unsubsidized Stafford Loans.

Chart 3 contains information on the interest rates for variable-rate Federal PLUS Loans.

Chart 4 contains information on the interest rates for fixed-rate Federal Consolidation Loans.

Chart 5 contains information on the interest rates for fixed-rate Federal Subsidized and Unsubsidized Stafford and PLUS Loans.

CHART 1—''CONVERTED'' VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS

| Cohort | | Original fixed interest rate (percent) | Max. rate (percent) | 91-Day T-bill rate (percent) | Margin (percent) | Total rate (percent) |
|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | | | | |
| 7/1/1988 | 7/23/1992 | 8.00, increasing to 10.00 | 10.00 | 0.03 | 3.25 | 3.28 |
| 7/23/1992 | 10/1/1992 | 8.00, increasing to 10.00 | 10.00 | 0.03 | 3.25 | 3.28 |
| 7/23/1992 | 7/1/1994 | 7.00 | 7.00 | 0.03 | 3.10 | 3.13 |
| 7/23/1992 | 7/1/1994 | 8.00 | 8.00 | 0.03 | 3.10 | 3.13 |
| 7/23/1992 | 7/1/1994 | 9.00 | 9.00 | 0.03 | 3.10 | 3.13 |
| 7/23/1992 | 7/1/1994 | 8.00, increasing to 10.00 | 10.00 | 0.03 | 3.10 | 3.13 |

**Note:** The FFEL Program loans represented by the second row of the chart were only made to ''new borrowers'' on or after July 23, 1992. Whether the FFEL Program loans represented by the third through sixth rows of the chart were made to a specific borrower depends on the interest rate on a borrower's existing loans at the time that the borrower received the loans between July 23, 1992 and prior to July 1, 1994.

In Charts 2 and 3, a dagger following a date in a cohort field indicates that the trigger for the rate to apply is a period of enrollment for which the loan was intended either ''ending before'' or ''beginning on or after'' the date in the cohort field.

CHART 2—VARIABLE-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD LOANS

| Cohort | | Max. rate (percent) | 91-Day T-bill rate (percent) | Margin | | Total rate | |
|---|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | | In-school, grace, deferment (percent) | All other periods (percent) | In-school, grace, deferment (percent) | All other periods (percent) |
| 10/1/1992 | 7/1/1994 | 9.00 | 0.03 | 3.10 | 3.10 | 3.13 | 3.13 |
| 7/1/1994 | 7/1/1994 † | 9.00 | 0.03 | 3.10 | 3.10 | 3.13 | 3.13 |
| 7/1/1994 | 7/1/1995 | 8.25 | 0.03 | 3.10 | 3.10 | 3.13 | 3.13 |
| 7/1/1995 | 7/1/1998 | 8.25 | 0.03 | 2.50 | 3.10 | 2.53 | 3.13 |
| 7/1/1998 | 7/1/2006 | 8.25 | 0.03 | 1.70 | 2.30 | 1.73 | 2.33 |

**Note:** The FFEL Program loans represented in the first row in Chart 2 were only made to ''new borrowers'' on or after October 1, 1992. The FFEL Program loans represented in the second row in Chart 2 were only made to ''new borrowers'' on or after July 1, 1994. The FFEL Program loans represented in the third row in Chart 2 must—in addition to having been first disbursed on or after July 1, 1994, and before July 1, 1995—have been made for a period of enrollment that began on or included July 1, 1994.

In Charts 3 and 4, an asterisk following a date in a cohort field indicates that the relevant trigger is an application for a Federal Consolidation Loan being received either ''on or after'' or ''before'' the date in the cohort field. For example, the sixth row in Chart 3 describes the interest rate for a Federal Consolidation Loan for which the application was received on or after November 13, 1997, but before October 1, 1998.

CHART 3—VARIABLE-RATE FEDERAL PLUS, SLS, AND CONSOLIDATION LOANS

| Loan type | Cohort | | Max. rate (percent) | Index rate | | Margin (percent) | Total rate (percent) |
|---|---|---|---|---|---|---|---|
| | First disbursed on or after | First disbursed before | | 91-Day T-bill rate (percent) | 1-Year constant treasury maturity (percent) | | |
| PLUS and SLS | | 10/1/1992 | 12.00 | | 0.10 | 3.25 | 3.35 |
| SLS | 10/1/1992 | † 7/1/1994 | 11.00 | | 0.10 | 3.10 | 3.20 |
| PLUS | 10/1/1992 | 7/1/1994 | 10.00 | | 0.10 | 3.10 | 3.20 |
| PLUS | 7/1/1994 | 7/1/1998 | 9.00 | | 0.10 | 3.10 | 3.20 |
| PLUS | 7/1/1998 | 7/1/2006 | 9.00 | 0.03 | | 3.10 | 3.13 |
| Consolidation | * 11/13/1997 | * 10/1/1998 | 8.25 | 0.03 | | 3.10 | 3.13 |
| HHS Portion of Consolidation | | | | 0.03 | | 3.00 | 3.03 |

The last row in Chart 3 refers to portions of Federal Consolidation Loans attributable to loans made by the U.S. Department of Health and Human Services under subpart I of part A of title VII of the Public Health Service Act.

CHART 4—FIXED-RATE CONSOLIDATION LOANS

| First disbursed on or after | First disbursed before | Max. rate (percent) | Rate |
|---|---|---|---|
| | 7/1/1994 | ..... | Weighted average of rates on the loans included in the consolidation, rounded to nearest whole percent, but not less than 9.00%. |
| 7/1/1994 | * 11/13/1997 | ..... | Weighted average of rates on the loans included in the consolidation, rounded upward to nearest whole percent. |
| 10/1/1998 | 7/1/2010 | 8.25 | Weighted average of rates on the loans included in the consolidation, rounded to the nearest higher 1/8 of 1 percent. |

CHART 5—FIXED-RATE FEDERAL SUBSIDIZED AND UNSUBSIDIZED STAFFORD AND PLUS LOANS

| Loan type | Student grade level | First disbursed on or after | First disbursed before | Rate (percent) |
|---|---|---|---|---|
| Subsidized | Undergraduate Students | 7/1/2006 | 7/1/2008 | 6.80 |
| Subsidized | Undergraduate Students | 7/1/2008 | 7/1/2009 | 6.00 |
| Subsidized | Undergraduate Students | 7/1/2009 | 7/1/2010 | 5.60 |
| Subsidized | Graduate/Professional Students | 7/1/2006 | 7/1/2010 | 6.80 |
| Unsubsidized | All Students | 7/1/2006 | 7/1/2010 | 6.80 |
| PLUS | Parents and Graduate/Professional Students | 7/1/2006 | 7/1/2010 | 8.50 |

**Note:** No new loans have been made under the FFEL Program since June 30, 2010.

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.

**Program Authority:** 20 U.S.C. 1071 et seq.

Dated: August 5, 2014.

**James W. Runcie,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. 2014–18787 Filed 8–7–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Annual Notice of Interest Rates of Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program Prior to July 1, 2013

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.268.

**DATES:** This notice is effective August 8, 2014.

**SUMMARY:** In accordance with section 455(b)(9) of the Higher Education Act of 1965, as amended, the Chief Operating Officer for Federal Student Aid announces the interest rates for the period July 1, 2014, through June 30, 2015, for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program prior to July 1, 2013. The Chief Operating Officer takes this action to give notice of Direct Loan interest rates to the public.

**FOR FURTHER INFORMATION CONTACT:** Ian Foss, U.S. Department of Education, 830 First Street NE., Room 114I1, Washington, DC 20202. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov.*

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.

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.**

**SUPPLEMENTARY INFORMATION:** Section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)), provides formulas for determining the interest rates charged to borrowers for loans made under the Direct Loan Program including: Federal Direct Subsidized Stafford Loans (Direct Subsidized Loans); Federal Direct Unsubsidized Stafford Loans (Direct Unsubsidized Loans); Federal Direct PLUS Loans (Direct PLUS Loans); and Federal Direct Consolidation Loans (Direct Consolidation Loans)(collectively, ''Direct Loans.'').

The Direct Loan Program includes loans with variable interest rates and loans with fixed interest rates. Most loans made under the Direct Loan Program before July 1, 2006, have variable interest rates that change each year. In most cases, the variable interest rate formula that applies to a particular loan depends on the date of the first disbursement of the loan. The variable rates are determined annually and are effective for each 12-month period beginning July 1 of one year and ending June 30 of the following year.

Under section 455(b) of the HEA, Direct Loans first disbursed on or after July 1, 2006, have a fixed interest rate.

In the case of some Direct Consolidation Loans, the interest rate is determined by the date on which the Direct Consolidation Loan application was received. Direct Consolidation

Loans for which the application was received on or after February 1, 1999, have a fixed interest rate. This fixed rate is based on the weighted average of the loans that are consolidated, rounded up to the nearest higher 1/8 of one percent. Direct Consolidation Loans for which the application was received on or after February 1, 1999, and prior to July 1, 2013, have a maximum interest rate of 8.25 percent.

Under section 455(b) of the HEA, the Direct Loan variable interest rates are based on formulas that use the bond equivalent rates of the 91-day Treasury bills auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage. These formulas apply to: all Direct Subsidized Loans and Direct Unsubsidized Loans; Direct Consolidation Loans for which the application was received on or after July 1, 1998, and before February 1, 1999; and Direct PLUS Loans disbursed on or after July 1, 1998. In each case, the calculated rate is capped by a maximum interest rate. The bond equivalent rate of the 91-day Treasury bills auctioned on May 27, 2014, which is used to calculate the interest rates on these loans, is 0.03 percent.

In addition, under section 455(b)(4) of the HEA, the interest rate for Direct PLUS Loans that were first disbursed on or after July 1, 1994, and before July 1, 1998, is based on the weekly average of the one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System on the last day of the calendar week ending on or before June 26 of each year, plus a statutory add-on percentage. The calculated rate is capped by a maximum interest rate. The weekly average of the one-year constant maturity Treasury yield published on June 20, 2014, which is used to calculate the interest rate on these loans, is 0.10 percent.

This notice includes five charts containing specific information on the calculation of the interest rates for loans made under the Direct Loan Program prior to July 1, 2013. We published a separate notice containing the interest rates for Direct Loans made for the current award year on July 1, 2014 (See 79 FR 37301).

Chart 1 contains information on the interest rates for variable-rate Direct Subsidized and Direct Unsubsidized Loans.

Chart 2 contains information on the interest rates for variable-rate Direct PLUS Loans.

Chart 3 contains information on the interest rates for variable-rate Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans.

Chart 4 contains information on the interest rates for variable-rate Direct PLUS Consolidation Loans.

Chart 5 contains information on the interest rates for fixed-rate Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, and Direct Consolidation Loans.

CHART 1—VARIABLE-RATE DIRECT SUBSIDIZED AND DIRECT UNSUBSIDIZED LOANS

| Cohort | | Max. rate (percent) | Index rate | Margin | | Total rate | |
|---|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | 91-Day T-bill rate (percent) | In-school, grace, deferment (percent) | All other periods (percent) | In-school, grace, deferment (percent) | All other periods (percent) |
| 7/1/1994 | 7/1/1995 | 8.25 | 0.03 | 3.10 | 3.10 | 3.13 | 3.13 |
| 7/1/1995 | 7/1/1998 | 8.25 | 0.03 | 2.50 | 3.10 | 2.53 | 3.13 |
| 7/1/1998 | 7/1/2006 | 8.25 | 0.03 | 1.70 | 2.30 | 1.73 | 2.33 |

CHART 2—VARIABLE-RATE DIRECT PLUS LOANS

| Cohort | | Max. rate (percent) | Index rate | | Margin (percent) | Total Rate (percent) |
|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | 91-Day T-bill rate (percent) | 1-Year constant treasury maturity (percent) | | |
| 7/1/1994 | 7/1/1998 | 9.00 | | 0.13 | 3.10 | 3.23 |
| 7/1/1998 | 7/1/2006 | 8.25 | 0.03 | | 3.10 | 3.13 |

In Charts 3 through 5, an asterisk following a date in a cohort field indicates that the trigger for the rate to apply is an application for a Direct Consolidation Loan being received either ''on or after'' or ''before'' the date in the cohort field. For example, the fourth row in Chart 3 describes the interest rate for Direct Subsidized and Unsubsidized Consolidation Loans for which the application was received before October 1, 1998, and that were first disbursed on or after October 1, 1998.

CHART 3—VARIABLE-RATE DIRECT SUBSIDIZED AND DIRECT UNSUBSIDIZED CONSOLIDATION LOANS

| Cohort | | Max. rate (percent) | Index rate | Margin | | Total rate | |
|---|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | 91-Day T-bill rate (percent) | In-school, grace, deferment (percent) | All other periods (percent) | In-school, grace, deferment (percent) | All other periods (percent) |
| 7/1/1994 | 7/1/1995 | 8.25 | 0.03 | 3.10 | 3.10 | 3.13 | 3.13 |
| 7/1/1995 | 7/1/1998 | 8.25 | 0.03 | 2.50 | 3.10 | 2.53 | 3.13 |
| 7/1/1998 | 10/1/1998 | 8.25 | 0.03 | 1.70 | 2.30 | 1.73 | 2.33 |
| 10/1/1998 | * 10/1/1998 | 8.25 | 0.03 | 1.70 | 2.30 | 1.73 | 2.33 |

CHART 3—VARIABLE-RATE DIRECT SUBSIDIZED AND DIRECT UNSUBSIDIZED CONSOLIDATION LOANS—Continued

| Cohort | | Max. rate (percent) | Index rate | Margin | | Total rate | |
|---|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | 91-Day T-bill rate (percent) | In-school, grace, deferment (percent) | All other periods (percent) | In-school, grace, deferment (percent) | All other periods (percent) |
| 10/1/1998* | *2/1/1999 | 8.25 | 0.03 | 2.30 | 2.30 | 2.33 | 2.33 |

CHART 4—VARIABLE-RATE DIRECT PLUS CONSOLIDATION LOANS

| Cohort | | Max. rate (percent) | Index rate | | Margin | | Total rate | |
|---|---|---|---|---|---|---|---|---|
| First disbursed on or after | First disbursed before | | 91-Day T-bill rate (percent) | 1-Year constant treasury maturity (percent) | In-school, grace, deferment (percent) | All other periods (percent) | In-school, grace, deferment (percent) | All other periods (percent) |
| 7/1/1994 | 7/1/1998 | 9.00 | | 0.10 | 3.10 | 3.10 | 3.20 | 3.20 |
| 7/1/1998 | 10/1/1998 | 9.00 | 0.03 | | 3.10 | 3.10 | 3.13 | 3.13 |
| 10/1/1998 | *10/1/1998 | 9.00 | 0.03 | | 3.10 | 3.10 | 3.13 | 3.13 |
| 10/1/1998* | *2/1/1999 | 8.25 | 0.03 | | 2.30 | 2.30 | 2.33 | 2.33 |

CHART 5—FIXED-RATE DIRECT SUBSIDIZED, DIRECT UNSUBSIDIZED, DIRECT PLUS LOANS, AND DIRECT CONSOLIDATION LOANS

| Loan type | Student grade level | First disbursed on or after | First disbursed before | Rate |
|---|---|---|---|---|
| Subsidized | Undergraduates | 7/1/2006 | 7/1/2008 | 6.80% |
| Subsidized | Undergraduates | 7/1/2008 | 7/1/2009 | 6.00% |
| Subsidized | Undergraduates | 7/1/2009 | 7/1/2010 | 5.60% |
| Subsidized | Undergraduates | 7/1/2010 | 7/1/2011 | 4.50% |
| Subsidized | Undergraduates | 7/1/2011 | 7/1/2013 | 3.40% |
| Subsidized | Graduate/Professional Students | 7/1/2006 | 7/1/2012 | 6.80% |
| Unsubsidized | All | 7/1/2006 | 7/1/2013 | 6.80% |
| PLUS | Parents and Graduate/Professionals. | 7/1/2006 | 7/1/2013 | 7.90% |
| Consolidation | All | 2/1/1999 | 7/1/2013 | Weighted average of rates on the loans included in the consolidation, rounded to 1/8 of 1 percent, up to 8.25 percent. |

**Note:** Interest rates for Direct Loans first disbursed on or after July 1, 2013, are published in a separate **Federal Register** notices, as follows:

- For Direct Loans first disbursed on or after July 1, 2013, and prior to July 1, 2014, see 78 FR 59011.
- For Direct Loans first disbursed on or after July 1, 2014, and prior to July 1, 2014, see 79 FR 37301.

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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.

**Program Authority:** 20 U.S.C. 1087 et seq.

Dated: August 5, 2014.

**James W. Runcie,**

*Chief Operating Officer Federal Student Aid.*

[FR Doc. 2014–18785 Filed 8–7–14; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Final Waiver and Extension of the Project Period; Training and Advisory Services—Equity Assistance Centers Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final waiver and extension of the project period.

**SUMMARY:** For the 36-month projects funded in fiscal year (FY) 2011 under the Training and Advisory Services—Equity Assistance Centers (EACs) program, the Secretary waives the requirements that generally prohibit project period extensions involving the obligation of additional Federal funds. The Secretary also extends the project period of these grants for up to an additional 24 months. This enables the 10 current grantees under the EACs program to continue to receive Federal

funding annually for project periods through FY 2015 and possibly through FY 2016. Further, the waiver and extension of the project period mean that we will not announce a new competition or make new awards in FY 2014.

**DATES:** The waiver and extension of the project period are effective August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Jenelle V. Leonard, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W203, Washington, DC 20202–6400. Telephone: (202) 401.0039 or by email: *EACcomments@ed.gov.*

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:** On April 28, 2014, we published a notice in the **Federal Register** (79 FR 23335) proposing an extension of the project period and waiver of 34 CFR 75.261(a) and (c)(2), which restricts project period extensions involving the obligation of additional Federal funds, as it relates to the 10 current EACs program grantees (April 2014 proposed waiver).

## Public Comment

In the April 2014 proposed waiver, the Secretary invited comments on the proposed waiver and extension of the project period. We received 49 comments in response.

## Analysis of Comments and Changes

An analysis of the comments received in response to the April 2014 proposed waiver follows.

*Comment:* The commenters expressed support for the proposed waiver and extension of the project period. Specifically, commenters supported building upon current services, sustaining the work of the grant program, maintaining continuity of high-quality services, and leveraging technical assistance resources. Commenters did not want to see a disruption or decrease in services provided to clients. One commenter stated that the disruption of services provided by the EACs would impede progress and prevent clients from receiving the help needed. Commenters also noted that the Centers are essential, serve as a valuable resource, and are a worthwhile investment by the Department. No negative comments were received.

*Discussion:* We appreciate the commenters' support and note the importance of the assistance provided by the EACs to school boards and other governmental agencies responsible for the preparation, adoption, and implementation of plans for the desegregation of public schools and the development of effective methods of coping with unique educational problems occasioned by desegregation. We agree that it is important that there not be a lapse in the services provided by the Centers.

*Change:* None.

## Background

The EACs program awards grants through cooperative agreements to eligible entities to operate 10 regional EACs. The EACs provide technical assistance and training at the request of school boards and other governmental agencies responsible for the preparation, adoption, and implementation of plans for the desegregation of public schools and the development of effective methods of coping with unique educational problems occasioned by desegregation. In this context, ''desegregation'' or ''equity'' refers to segregation based on race, sex, or national origin. The EACs (formerly the Desegregation Assistance Centers) assist States, districts, and public schools in providing effective instruction to all students and specifically to those students for whom disparities in achievement persist.

The EACs are authorized by title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c) and operate under the implementing regulations at 34 CFR parts 270 and 272. These regulations identify, among other components of the program, the 10 regions to be served by the EACs, eligible recipients of EAC assistance, the criteria used to make a grant, how the amount of the grant is determined, and the conditions that must be met by the grant recipient.

The geographic regions served by the EACs are:

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II: New Jersey, New York, Puerto Rico, and the Virgin Islands.

Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region VII: Iowa, Kansas, Missouri, and Nebraska.

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX: Arizona, California, and Nevada.

Region X: Alaska, American Samoa, Guam, Hawaii, Idaho, Northern Mariana Islands, Oregon, The Federated States of Micronesia, The Republic of the Marshall Islands, The Republic of Palau, and Washington.

On March 10, 2011, we published in the **Federal Register** (76 FR 13137) a notice inviting applications for new awards under the FY 2011 EACs program competition (2011 EAC NIA). In FY 2011, the Department made new awards to 10 EAC projects. The three-year project period for these EACs is currently scheduled to end on September 30, 2014.

For those EACs, the Secretary waives the requirements in 34 CFR 75.261(a) and (c)(2), which prohibits the extension of project periods involving the obligation of additional Federal funds, and extends the project period for the current EACs for up to 24 months. This will allow the 10 current EAC grantees to continue to receive Federal funding through FY 2015 and possibly through FY 2016.

We are waiving the requirements in 34 CFR 75.261(a) and (c)(2) and extending the project period for the current EAC grantees. Based on the grantees' performance, public comments, and a 2013 survey of EAC clients conducted by the Federal Research Division of the Library of Congress in which 94 percent of the respondents rated the quality of the EAC products and services they received during the 2012–2013 school year as ''high'' or ''very high,'' we have concluded that the existing EACs are providing high-quality services. Therefore, it would not be in the public interest to incur the disruption in services associated with holding a new EACs competition in FY 2014. It would be more effective to maintain continuity of the high-quality services offered by these grantees to their clients rather than transition to new grantees only three years after the FY 2011 awards. These services include disseminating information on successful education practices and legal requirements related to nondiscrimination on the basis of race, sex, and national origin in educational programs; training designed to develop educators' skills in specific areas such as identification of race and sex bias in instructional materials; technical assistance in the identification and selection of appropriate educational programs to meet the needs of limited English proficient students; addressing disproportionality in schools among students and teachers; and instructing school officials on how to prevent sexual harassment and combat biases. In addition, issuing continuation awards, instead of holding a new competition,

will allow the current grantees to continue to serve as a resource for the Department's Office for Civil Rights in working with school districts that have achieved unitary status (i.e., school district(s) released from court-ordered desegregation obligations). The grantees will continue to offer technical assistance to school districts, State educational agencies, and others who seek to resolve civil rights conflicts and promote social justice and equity. Further, the current grantees will continue to provide resources and training in the areas of hate crimes, racial prejudice, and bullying.

We will fund the extended project period using FY 2014 funds. In addition, we may also extend the project period for a second year, using FY 2015 funds that Congress appropriates under the current statutory authority.

Under this waiver and extension of the project period—

(1) Current grantees will be authorized to receive EAC continuation awards annually for up to an additional two years.

(2) We will not announce a new EAC competition or make new EAC grant awards in FY 2014 and possibly in FY 2015.

(3) During the extension period, any activities carried out must be consistent with, or be a logical extension of the scope, goals, and objectives of each grantee's approved application from the 2011 EAC competition.

(4) Each grantee that receives a continuation award must also continue to comply with the requirements established in the program regulations and the 2011 EAC NIA.

(5) All requirements applicable to continuation awards for current EAC grantees and the requirements in 34 CFR 75.253 will apply to any continuation awards received by current EAC grantees, i.e., each grantee must demonstrate substantial progress performing its approved grant activities, as evidenced through program narratives, budgets and budget narratives, and performance reports.

**Regulatory Flexibility Act Certification**

The Secretary certifies that the waiver and extension and the activities required to support additional years of funding will not have a significant economic impact on a substantial number of small entities. The entities that will be affected by this proposed waiver and extension of the project period are the 10 current EAC grantees receiving Federal funds and any other potential applicants.

The Secretary certifies that the waiver and extension will not have a significant economic impact on these entities because the waiver and extension impose minimal compliance costs to extend projects already in existence, and the activities required to support the additional years of funding will not impose additional regulatory burdens or require unnecessary Federal supervision.

**Paperwork Reduction Act of 1995**

This proposed waiver and extension does not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

*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**.

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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.

**Program Authority:** 42 U.S.C. 2000c–2000c–2, 2000c–5.

Dated: August 5, 2014.

**Deborah S. Delisle,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 2014–18789 Filed 8–7–14; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC14–122–000.

*Applicants:* Dempsey Ridge Wind Farm, LLC, EcoGrove Wind, LLC, Red Hills Wind Project, L.L.C., Acciona Wind Energy USA LLC, Nevada Solar One, LLC, Tatanka Wind Power, LLC.

*Description:* Application under Section 203 of the FPA of Dempsey Ridge Wind Farm, LLC, et al.

*Filed Date:* 8/1/14.

*Accession Number:* 20140801–5127.

*Comments Due:* 5 p.m. ET 8/22/14.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers: ER10–2134–006; ER10–2127–008.*

*Applicants:* Hardee Power Partners Limited, Invenergy TN LLC.

*Description:* Category 1 Seller Filing for the Southeast region of Hardee Power Partners Limited and Invenergy TN LLC.

*Filed Date:* 8/1/14.

*Accession Number:* 20140801–5124.

*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER13–1748–003.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Amendment to Order 755 Compliance Filing—ER13–1748 to be effective 3/1/2015.

*Filed Date:* 8/1/14.

*Accession Number:* 20140801–5084.

*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–1656–002.

*Applicants:* CSOLAR IV West, LLC.

*Description:* Notification of Change In Status of CSOLAR IV West, LLC.

*Filed Date:* 8/1/14.

*Accession Number:* 20140801–5098.

*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2138–001.

*Applicants:* Limon Wind III, LLC.

*Description:* Amendment to Limon Wind III, LLC Application for Market-Based Rate Authority to be effective 7/15/2014.

*Filed Date:* 8/1/14.

*Accession Number:* 20140801–5140.

*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2343–001.

*Applicants:* Florida Power & Light Company.

*Description:* FPL and Seminole Electric Cooperative, Inc. Supplement to TSA No. 162 to be effective 7/2/2014.

*Filed Date:* 8/1/14.

*Accession Number:* 20140801–5144.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2563–000.
*Applicants:* Tucson Electric Power Company.
*Description:* Order No. 792 Compliance Filing to be effective 8/4/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5061.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2564–000.
*Applicants:* UNS Electric, Inc.
*Description:* Order No. 792 Compliance Filing to be effective 8/4/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5063.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2565–000.
*Applicants:* Public Service Company of New Mexico.
*Description:* OATT Order No. 792 Compliance Filing to be effective 8/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5066.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2566–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* 2014–08–01 ELMP True-Up Filing to be effective 10/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5067.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2567–000.
*Applicants:* Public Service Company of Colorado.
*Description:* 20140801 Burlington PPA Revision to be effective 10/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5073.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2568–000.
*Applicants:* Arizona Public Service Company.
*Description:* OATT Modification Pursuant to Order No. 792 to be effective 10/3/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5097.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2569–000.
*Applicants:* Alabama Power Company.
*Description:* Attachment J–2 (SGIP/SGIA)—Order No. 792 Compliance Filing to be effective 8/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5099.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2570–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Order 792 Small Generator Interconnection Compliance Filing to be effective 8/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5136.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2571–000.
*Applicants:* Idaho Power Company.
*Description:* Attachment G—Network Operating Agreement to be effective 10/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5139.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2572–000.
*Applicants:* Arizona Public Service Company.
*Description:* Rate Schedule No. 217—Exhibit B.CAG Rev. 2 and Exhibit B.RVL Rev. 4 to be effective 10/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5153.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2573–000.
*Applicants:* New York Independent System Operator, Inc.
*Description:* NYISO/NYTO joint compliance filing re: FERC Order No. 792 SGIA and SGIP to be effective 12/31/9998.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5157.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2574–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* 2014–08–01 FRAC–MOO to be effective 11/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5158.
*Comments Due:* 5 p.m. ET 8/22/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 1, 2014.

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

*Deputy Secretary.*

[FR Doc. 2014–18814 Filed 8–7–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2137–009; ER12–161–008; ER12–164–007; ER12–645–009; ER10–2130–008; ER10–2131–009; ER10–2138–009; ER10–2139–009; ER10–2140–009; ER10–2141–009; ER11–4044–009; ER11–4046–008; ER10–2127–007; ER10–2125–009; ER14–25–005; ER10–2133–009; ER10–2124–008; ER11–3872–010; ER10–2132–008; ER10–2128–008; ER10–2764–008.
*Applicants:* Beech Ridge Energy LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC, California Ridge Wind Energy LLC, Forward Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Invenergy TN LLC, Judith Gap Energy LLC, Prairie Breeze Wind Energy LLC, Sheldon Energy LLC, Spring Canyon Energy LLC, Stony Creek Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC, Vantage Wind Energy LLC.
*Description:* Notification of Change in Facts of Beech Ridge Energy LLC, et al.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5051.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER12–1643–004.
*Applicants:* ISO New England Inc.
*Description:* Ext. Of Regulation Market Eff. Date to be effective 3/31/2015.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5052.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2557–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Amendment to the 2013 Annual RTEP Allocation Filing in Docket No. ER14–909–000 to be effective 1/1/2014.
*Filed Date:* 7/31/14.
*Accession Number:* 20140731–5204.
*Comments Due:* 5 p.m. ET 8/21/14.

*Docket Numbers:* ER14–2558–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Bellingham Cold Storage—Orchard TX SA No. 708, 709 & 710 to be effective 5/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5011.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2559–000.

*Applicants:* Puget Sound Energy, Inc.
*Description:* Bellingham Cold Storage-Roeder TX Agreements 705, 706 & 707 to be effective 5/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5012.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2560–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Tesoro TX Agreements 702, 703 & 704 to be effective 5/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5013.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2561–000.
*Applicants:* Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
*Description:* NiMo cancellation: Cost Reimbursement Agreement No. 1953 w/ Erie Blvd. Hydro to be effective 10/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5025.
*Comments Due:* 5 p.m. ET 8/22/14.

*Docket Numbers:* ER14–2562–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* 2014–08–01 SGIP Order 792 Filing to be effective 10/1/2014.
*Filed Date:* 8/1/14.
*Accession Number:* 20140801–5053.
*Comments Due:* 5 p.m. ET 8/22/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 1, 2014.

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

*Deputy Secretary.*

[FR Doc. 2014–18813 Filed 8–7–14; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Loveland Area Projects—Rate Order No. WAPA–167

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Proposed Power Rates.

**SUMMARY:** The Western Area Power Administration (Western) Loveland Area Projects' (LAP) Rate Schedule L–F9 expires December 31, 2014. LAP consists of the Fryingpan-Arkansas Project (Fry-Ark) and the Pick-Sloan Missouri Basin Program (P–SMBP)—Western Division, which were integrated for marketing and rate-making purposes in 1989. Western is proposing modifications to the charge components in Rate Schedule L–F9 in order to true up the base and drought adder charges, which require a minor rate adjustment process. The revenue requirement and the total rate charges in the firm electric service rate schedule are not changing from Rate Schedule L–F9 and will continue to provide sufficient revenue to pay all annual costs, including interest expense, and repay investments within the allowable periods. If approved, the proposed Rate Schedule L–F10 will become effective on January 1, 2015, and will remain in effect through December 31, 2019. Publication of this **Federal Register** notice begins the formal process for the proposed rate schedule.

**DATES:** The consultation and comment period will begin today and will end September 8, 2014. Western will accept written comments any time during the consultation and comment period.

**ADDRESSES:** Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the rates submitted by Western to FERC for approval should be sent to: Mr. Bradley S. Warren, Regional Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986 or email *lapfirmadj@wapa.gov.* Information about the rate process is posted on Western's Web site at *https://www.wapa.gov/rm/ratesRM/2015/default.htm.* Western will post official comments received via letter and email to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sheila D. Cook, Rates Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7211, email *lapfirmadj@wapa.gov* or *scook@wapa.gov.*

**SUPPLEMENTARY INFORMATION:** On December 16, 2009, the Deputy Secretary of Energy approved, on an interim basis, Rate Schedule L–F9 under Rate Order No. WAPA–146 for the period beginning January 1, 2010, and ending December 31, 2014 (74 FR 67191–67197 (Dec. 18, 2009)).[1] The existing charges in the current rate schedule for LAP firm electric service continue to provide sufficient revenue to meet the LAP repayment obligations. The total annual revenue requirement for LAP remains $84.5 million for firm electric service and the overall capacity and energy charges are not changing, as indicated in the following Table 1:

TABLE 1—COMPARISON OF EXISTING AND PROPOSED RATES

| Firm electric service | Existing rate (January 1, 2010) L–F9 | Proposed rate (January 1, 2015) L–F10 | Percent change (%) |
|---|---|---|---|
| LAP Revenue Requirement (million) | $84.5 | $84.5 | 0 |
| LAP Composite Rate (mills/kWh) | 41.42 | 41.42 | 0 |
| Firm Energy Rate (mills/kWh) | 20.71 | 20.71 | 0 |
| Firm Capacity Rate ($/kWmonth) | $5.43 | $5.43 | 0 |

[1] FERC confirmed and approved Rate Order WAPA–146 on a final basis on June 18, 2010, in Docket No. EF10–1–000. See *United States Department of Energy, Western Area Power Administration (Loveland Area Projects),* 131 FERC ¶ 62,247.

Under the current rate methodology, rates for LAP firm electric service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance, and other expenses within the allowable period. The annual revenue requirement continues to be allocated equally between capacity and energy.

Western is proposing to true up the base and drought adder components of the rate schedule and to place a new rate schedule into effect for the 5-year period beginning January 1, 2015, through December 31, 2019. The proposed true up updates the base component to represent present costs and lowers the drought adder component to represent present drought costs. Over the past 5-year rate period, the P–SMBP costs included in the LAP drought adder have decreased as the actual deficits taken were less than projected when the current charges were placed into effect. Additionally, there has been P–SMBP drought costs repaid ahead of schedule, which decreased the drought deficit interest expense. The portion of the LAP drought adder component coming from Fry-Ark ($200,000) is now going to $0, as Fry-Ark did not actually incur any deficits and Fry-Ark is not projecting any future non-timing purchases at this time. All historical drought-related costs for Fry-Ark have been repaid. In addition, base costs for both P–SMBP and Fry-Ark increased during that same period due to a new 5-year cost evaluation period, new investments and replacements, and inflationary costs. A comparison of the current and proposed components is listed in Table 2.

TABLE 2—SUMMARY OF LAP RATE COMPONENTS

| | Existing charges under rate schedule L–F9 as of January 1, 2010 | | | Proposed charges under rate schedule L–F10 as of January 1, 2015 | | |
|---|---|---|---|---|---|---|
| | Base Component | Drought adder component | Total charge | Base component | Drought adder component | Total charge |
| Firm Capacity Rate (/kWmonth) | $3.29 | $2.14 | $5.43 | $3.92 | $1.51 | $5.43 |
| Firm Energy Rate (mills/kWh) | 12.54 | 8.17 | 20.71 | 14.95 | 5.76 | 20.71 |

Over the last 5 years, Western has conducted its annual process of reviewing the sufficiency of the drought adder. With the rate schedule set to expire December 31, 2014, and the requirement of a public process to place a new rate schedule into effect, Western proposes to true up the base and drought adder components in the new rate schedule to current values. Updating the components does not change the overall charges, it only identifies what portion of the charge is driven by base and drought adder components.

**Legal Authority**

The proposed modifications to the rate schedule for firm electric service, resulting in a true up of the base and drought adder components, as described above, constitute a minor rate adjustment, as defined by 10 CFR part 903.2(f). Western determined it is not necessary to hold a public information or public comment forum for this minor rate adjustment and, instead, held an informal public meeting via webinar, pursuant to 10 CFR part 903.17. Western will review all timely public comments and make amendments or adjustments to the proposal as appropriate. A proposed rate schedule will be forwarded to the Deputy Secretary of Energy for approval on an interim basis.

Western is establishing firm electric service rates for LAP under the Department of Energy (DOE) Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00A, effective October 25, 2013, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

**Availability of Information**

All studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Rocky Mountain Regional Office located at 5555 East Crossroads Boulevard, Loveland, Colorado. Many of these documents and supporting information are also available on Western's Web site under the ''2015 Firm Rate Adjustment'' section located at *https://www.wapa.gov/rm/ratesRM/2015/default.htm.*

Western held an informal public meeting on May 2, 2014, via a webinar to inform customers, Native American tribes, stakeholders, and other interested parties about the adjustment. The webinar was recorded and posted to the above referenced Western Web site.

**Ratemaking Procedure Requirements**

*Environmental Compliance*

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.;* the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

*Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: July 23, 2014.

**Mark A. Gabriel,**

*Administrator.*

[FR Doc. 2014–18811 Filed 8–7–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Boulder Canyon Project—Post-2017 Resource Pool

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Proposed Allocation.

**SUMMARY:** The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces the Boulder Canyon Project (BCP) Post-2017 Resource Pool Proposed Allocation of Power (BCP Proposed Allocation) developed under the Conformed Power Marketing Criteria or Regulations for the Boulder Canyon Project (2012 Conformed Criteria) published in the **Federal Register** on June 14, 2012, as required by the Hoover Power Allocation Act of 2011, and Western's final BCP post-2017 marketing criteria and call for applications published in the **Federal Register** on December 30, 2013. Applications received by March 31, 2014, were considered for an allocation. Western will prepare and publish the Final Allocation of Power in the **Federal Register** after the close of the comment period provided for in this **Federal Register** notice and consideration of all submitted public comments.

**DATES:** Entities interested in commenting on the BCP Proposed Allocation may submit written comments using the methods set out in the **ADDRESSES** section. Western will accept written comments received on or before September 19, 2014.

Western will hold three public information forums on the BCP Proposed Allocation. The dates for the public information forums are:

1. August 26, 2014, 1 p.m., PDT, Las Vegas, Nevada.
2. August 27, 2014, 10 a.m., PDT, Ontario, California.
3. August 28, 2014, 10 a.m., MST, Tempe, Arizona.

Following the public information forums, Western will hold three public comment forums. The dates for the public comment forums are:

1. September 16, 2014, 1 p.m., PDT, Las Vegas, Nevada.
2. September 17, 2014, 10 a.m., PDT, Ontario, California.
3. September 18, 2014, 10 a.m., MST, Tempe, Arizona.

**ADDRESSES:** Written comments regarding the BCP Proposed Allocation should be sent to: Mr. Ronald E. Moulton, Acting Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457. Comments may also be faxed to (602) 605–2490 or emailed to *Post2017BCP@wapa.gov.*

The public information and public comment forums will be held at: The New Las Vegas Tropicana, 3801 Las Vegas Boulevard South, Las Vegas, Nevada; DoubleTree Ontario Airport, 222 N. Vineyard, Ontario, California; DoubleTree by Hilton Hotel Phoenix Tempe, 2100 S. Priest Drive, Tempe, Arizona.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Simonton, Public Utilities Specialist, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone number (602) 605–2675, email *Post2017BCP@wapa.gov.* Comments received in response to this **Federal Register** notice will be posted to Western's Web site at *http://www.wapa.gov/dsw/pwrmkt.*

**SUPPLEMENTARY INFORMATION:** The BCP was authorized by the Boulder Canyon Project Act of 1928 (43 U.S.C. 617) (BCPA). Under Section 5 of the BCPA, the Secretary of the Interior marketed the capacity and energy from the BCP under electric service contracts effective through May 31, 1987. In 1977, the power marketing functions of the Secretary of the Interior were transferred to Western by Section 302 of the Department of Energy Organization Act (42 U.S.C. 7152) (DOE Act). On December 28, 1984, Western published the Conformed General Consolidated Criteria or Regulations for Boulder City Area Projects (1984 Conformed Criteria) (49 FR 50582) to implement applicable provisions of the Hoover Power Plant Act of 1984 (43 U.S.C. 619) for the marketing of BCP power through September 30, 2017.

On December 20, 2011, Congress enacted the Hoover Power Allocation Act of 2011 (43 U.S.C. 619a) (HPAA), which provides direction and guidance in marketing BCP power after the existing contracts expire on September 30, 2017. On June 14, 2012, Western published the 2012 Conformed Criteria (77 FR 35671) to implement applicable provisions of the HPAA for the marketing of BCP power from October 1, 2017, through September 30, 2067. The 2012 Conformed Criteria formally established a resource pool defined as ''Schedule D'' to be allocated to new allottees. In accordance with the HPAA, Western allocated portions of Schedule D power to the Arizona Power Authority (APA) and the Colorado River Commission of Nevada (CRC), as described in the June 14, 2012, **Federal Register** notice. Of the remaining Schedule D power, Western is to allocate 11,510 kilowatts (kW) of contingent capacity and associated firm energy to new allottees within the State of California, and 69,170 kW of contingent capacity and associated firm energy to new allottees within the Boulder City Area (BCA) marketing area as defined in the 2012 Conformed Criteria.

After conducting a public process and in consideration of comments received, Western published final marketing criteria (78 FR 79436) and made a call for applications on December 30, 2013. Applications from those seeking an allocation of Schedule D power from Western were due on March 31, 2014. The BCP Proposed Allocation was determined by applying the final marketing criteria to the applications received during the call for applications. Western seeks comments on the proposed allocations during this comment period.

### Proposed Power Allocation

Western received 107 applications for Schedule D power. The final marketing criteria provide Native American tribes first consideration for an allocation of Schedule D sufficient to provide Federal hydropower up to 25 percent of their peak load when considering the amount of their load already served by existing Federal power resource allocations. Western received 33 applications from Native American tribes and 74 applications from non-tribal entities.

The BCP Proposed Allocation was established by applying the final marketing criteria. The 69,170 kW to be marketed in the BCA marketing area was distributed first. Application of the first consideration for Native American tribes resulted in 28,970 kW of contingent capacity to tribes. The remaining 40,200 kW was distributed to eligible applicants pro-rata based on peak load while normalizing the percentage of the applicants' peak loads served by Federal hydropower. The 11,510 kW to be marketed in the State of California was distributed to eligible California applicants pro-rata based on peak load while normalizing the percentage of the applicants' peak loads served by Federal hydropower inclusive of distributions of the 69,170 kW.

Capacity from the Post-2017 Resource Pool was allocated to eligible applicants under the final marketing criteria. Associated energy was determined by a pro-rata distribution to the allocated capacity consistent with HPAA Schedule D.

The BCP Proposed Allocation is as follows:

| Boulder Canyon project | Proposed post-2017 power allocations | | | |
|---|---|---|---|---|
| Allottee | Contingent capacity (kW) | Firm energy (kWh) | | |
| | | Summer | Winter | Total |
| Agua Caliente Band of Cahuilla Indians | 1,449 | 2,212,925 | 950,554 | 3,163,479 |
| Ann Electric Cooperative, Inc. | 1,836 | 2,803,827 | 1,201,670 | 4,005,497 |
| Augustine Band of Cahuilla Indians | 224 | 341,787 | 146,814 | 488,601 |
| Bishop Paiute Tribe | 380 | 580,896 | 249,522 | 830,418 |
| Cabazon Band of Mission Indians | 1,001 | 1,529,415 | 656,955 | 2,186.370 |
| California Department of Water Resources | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| Chemehuevi Indian Tribe | 1,386 | 2,116,664 | 909,206 | 3,025.870 |
| City of Cerritos, California | 3,000 | 4,581,918 | 1,965,197 | 6,547,115 |
| City of Chandler, AZ Municipal Utilities Department | 830 | 1,267,957 | 544,646 | 1,812,604 |
| City of Corona, California | 3,000 | 4,582,103 | 1,963,423 | 6,545,526 |
| City of Flagstaff, Arizona | 214 | 326,211 | 140,123 | 466,334 |
| City of Glendale, Arizona | 525 | 801,670 | 344,355 | 1,146,025 |
| City of Globe, Arizona | 151 | 230,255 | 98,905 | 329,160 |
| City of Henderson, Nevada | 865 | 1,321,594 | 567,686 | 1,889,280 |
| City of Las Vegas, Nevada | 1,117 | 1,705,672 | 732,665 | 2,438,337 |
| City of North Las Vegas, Nevada | 253 | 386,274 | 165,923 | 552,197 |
| City of Payson, Arizona | 149 | 227,025 | 97,518 | 324,542 |
| City of Peoria, Arizona | 435 | 664,186 | 285,299 | 949,485 |
| City of Phoenix, Arizona | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| City of Rancho Cucamonga, CA Municipal Utility | 3,000 | 4,581,920 | 1,965,183 | 6,547,103 |
| City of Scottsdale, Arizona | 2,755 | 4,207,817 | 1,807,453 | 6,015,270 |
| City of Tempe, AZ Public Works Department | 257 | 391,907 | 168,342 | 560,249 |
| City of Tucson, Arizona Water Department | 1,501 | 2,292,297 | 984,648 | 3,276,945 |
| City of Victorville, California | 2,901 | 4,431,073 | 1,900,234 | 6,331,307 |
| Clark County School District | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| Clark County Water Reclamation District | 741 | 1,132,024 | 486,257 | 1,618,281 |
| College of Southern Nevada | 446 | 680,761 | 292,418 | 973,179 |
| Duncan Valley Electric Cooperative, Inc. | 135 | 206,289 | 88,611 | 294,900 |
| Fort McDowell Yavapai Nation | 338 | 516,596 | 221,902 | 738,497 |
| Gila River Indian Community | 838 | 1,279,092 | 549,429 | 1,828,521 |
| Graham County Electric Cooperative, Inc. | 556 | 848,804 | 364,601 | 1,213,405 |
| Hualapai Indian Tribe | 381 | 581,402 | 249,739 | 831,142 |
| Imperial Irrigation District | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| Kaibab Band of Paiute Indians | 124 | 189,374 | 81,345 | 270,719 |
| Las Vegas Paiute Tribe | 592 | 904,123 | 388,363 | 1,292,485 |
| Las Vegas Valley Water District | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| Metropolitan Domestic Water Improvement District | 105 | 159,687 | 68,593 | 228,280 |
| Mohave Electric Cooperative, Inc. | 2,878 | 4,395,963 | 1,888,270 | 6,284,233 |
| Morongo Band of Mission Indians | 1,098 | 1,677,459 | 720,547 | 2,398,005 |
| Navajo Tribal Utility Authority | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| Navopache Electric Cooperative, Inc. | 610 | 931,473 | 400,111 | 1,331,584 |
| Northern Arizona Irrigation District Power Pool | 306 | 467,490 | 200,809 | 668,298 |
| Pascua Yaqui Tribe | 217 | 330,693 | 142,048 | 472,741 |
| Pechanga Band of Luiseno Mission Indians | 2,000 | 3,054,583 | 1,312,085 | 4,366,668 |
| Salt River Pima-Maricopa Indian Community | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| San Diego County Water Authority | 1,757 | 2,683,309 | 1,150,718 | 3,834,026 |
| San Luis Rey River Indian Water Authority | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| San Manuel Band of Mission Indians | 2,554 | 3,901,025 | 1,675,672 | 5,576,697 |
| State of Nevada Department of Corrections | 186 | 283,682 | 121,855 | 405,536 |
| Sulphur Springs Valley Electric Cooperative, Inc. | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| Timbisha Shoshone Tribe | 119 | 181,190 | 77,830 | 259,020 |
| Tohono O'odham Nation | 2,709 | 4,137,589 | 1,777,287 | 5,914,876 |
| Tonto Apache Tribe | 195 | 298,187 | 128,085 | 426,273 |
| Torres Martinez Desert Cahuilla Indians | 1,657 | 2,531,217 | 1,087,275 | 3,618,493 |
| Trico Electric Cooperative, Inc. | 3,000 | 4,581,625 | 1,968,021 | 6,549,646 |
| Twenty-Nine Palms Band of Mission Indians | 1,319 | 2,014,467 | 865,307 | 2,879,774 |
| University of Nevada, Las Vegas | 202 | 308,732 | 132,615 | 441,347 |
| Viejas Band of Kumeyaay Indians | 1,388 | 2,120,147 | 910,702 | 3,030,849 |
| Total | 80,680 | 123,217,000 | 52,909,000 | 176,126,000 |

After applying the criteria to eligible applications received, the following applicants have not been assigned a proposed allocation due to the following reasons:

Amount of Peak Load Already Served by Federal Hydropower

Ak-Chin Indian Community;
Central Arizona Irrigation & Drainage District;
City of Maricopa, Arizona;
City of Mesa, Arizona;
City of Mesquite, Nevada;
City of Needles, California;
City of Page, Arizona Water Utility;
City of Williams, Arizona;
Colorado River Indian Tribes;
Fort Mohave Indian Tribe;
Hohokam Irrigation & Drainage District;
Hyder Valley Irrigation & Water Delivery District;
Maricopa-Standfield Irrigation & Drainage District;
Moapa Band of Paiutes;
Moapa Valley Water District;
Mt. Wheeler Power Inc.;
New Magma Irrigation & Drainage District;
Nye County, Nevada;
Paloma Irrigation & Drainage District;
San Carlos Apache Tribe;
State of Nevada Department of Veterans Sevices;
Town of Fredonia, Arizona;
Town of Gilbert, Arizona;
Virgin Valley Water District;
White Mountain Apache Tribe.

Potential Allocation Does Not Meet 100 kW Minimum

Arizona Rural Irrigation District Pooling Parties;
Avra Water Co-op, Inc.;
Board of Regents, Nevada State College;
City of Sedona, Arizona;
City of Sierra Vista, Arizona;
Desert Research Institute;
Division of Museums & History, Lost City Museum;
Ewiiaapaayp Band of Kumeyaay Indians;
Grover's Hill Irrigation District;
Havasupai Tribe;
Henderson District Public Libraries;
Mohave Valley Irrigation & Dainage District;
State of Nevada Department of Administration;
State of Nevada Department of Employment;
State of Nevada Department of Health & Human Services;
State of Nevada Department of Transportation;
State of Nevada Division of State Parks & Division of Forestry;
State of Nevada, Office of the Military;
Yavapai-Apache Nation.

Two applicants did not provide sufficient historical load information to receive further consideration for an allocation and three applicants did not meet the general eligibility requirements. The Red Rock Agricultural Improvement and Power District Irrigation Water Delivery District of Pinal County, and the Pauma Band of Mission Indians failed to submit suitable historical load information for consideration in their application. The Silverbell Irrigation and Drainage District is a direct allottee of the APA for BCP power and therefore is not considered a new allottee eligible for Schedule D. The San Carlos Irrigation Project and the Department of Energy National Nuclear Security Administration are Federal agencies and are not considered eligible under Section 5 of the BCPA.

**Regulatory Procedure Requirements**

*Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

*Environmental Compliance*

In accordance with the DOE National Environmental Policy Act Implementing Procedures (10 CFR 1021), Western has determined that these actions fit within a class of action B4.1 Contracts, policies, and marketing and allocation plans for electric power, in Appendix B to Subpart D to Part 1021—Categorical Exclusions Applicable to Specific Agency Actions.

Dated: July 30, 2014.

**Mark A. Gabriel,**

*Administrator.*

[FR Doc. 2014–18797 Filed 8–7–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Pick-Sloan Missouri Basin Program—Eastern Division-Rate Order No. WAPA–166

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of proposed power rates.

**SUMMARY:** The Western Area Power Administration (Western) Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) Rate Schedules P–SED–F11 and P–SED–FP11 for firm power and firm peaking power service expire December 31, 2014. Western is proposing modifications to the charge components in Rate Schedules P–SED–F11 and P–SED–FP11 in order to true up the base and drought adder charges, which require a minor rate adjustment process. The revenue requirement and the total rate charges in the firm power and firm peaking power service rate schedules are not changing from Rate Schedules P–SED–F11 and P–SED–FP11 and will continue to provide sufficient revenue to pay all annual costs, including interest expense, and repay investments within the allowable periods. If approved, the proposed Rate Schedules P–SED–F12 and P–SED–FP12 will become effective on January 1, 2015, and will remain in effect through December 31, 2019. Publication of this **Federal Register** notice begins the formal process for the proposed rate schedules.

**DATES:** The consultation and comment period will begin today and will end September 8, 2014. Western will accept written comments any time during the consultation and comment period.

**ADDRESSES:** Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the rates submitted by Western to FERC for approval should be sent to: Mr. Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, or email *ugpfirmrate@wapa.gov.* Information about the rate process is posted on Western's Web site at *http://www.wapa.gov/ugp/rates/2015firmrateadjust.* Western will post official comments received via letter and email to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone: (406) 255–2920, email: *cady@wapa.gov.*

**SUPPLEMENTARY INFORMATION:** On December 14, 2009, the Deputy Secretary of Energy approved, on an interim basis, Rate Order No. WAPA–147 and Rate Schedules P–SED–F11 and P–SED–FP11 for the period beginning January 1, 2010, and ending December 31, 2014 (74 FR 67197–67204 (Dec. 18, 2009)).[1] The existing P–SMBP—ED charges in the current rate schedules for firm power and firm peaking power continue to provide sufficient revenue

[1] FERC confirmed and approved Rate Order WAPA–147 on a final basis on September 10, 2010, in Docket No. EF10–2–000. See *United States Department of Energy, Western Area Power Administration (Pick-Sloan Missouri Basin Program—Eastern Division),* 132 FERC ¶ 62,159.

to meet the P–SMBP—ED repayment obligations. The total annual revenue requirement for P–SMBP—ED remains $320.2 million for firm power and firm peaking power service, and the overall capacity and energy charges are not changing, as indicated in the following Table 1:

TABLE 1—COMPARISON OF EXISTING AND PROPOSED RATES

| Firm power service | Existing charges under rates effective (January 1, 2010) P–SED–F11/P–SED–FP11 | Proposed charges under rates effective (January 1, 2015) P–SED–F12/P–SED–FP12 | Percent change (%) |
|---|---|---|---|
| P–SMBP—ED Revenue Requirement (millions $) | $320.2 | $320.2 | 0 |
| P–SMBP—ED Composite Rate (mills/kWh) | 33.25 | 33.25 | 0 |
| Firm Capacity ($/kW-month) | $7.65 | $7.65 | 0 |
| Firm Energy (mills/kWh) | 19.05 | 19.05 | 0 |
| Firm Peaking Capacity ($/kW-month) | $6.90 | $6.90 | 0 |
| Firm Peaking Energy (mills/kWh) *1/* | 19.05 | 19.05 | 0 |

*1* Firm Peaking Energy is normally returned. This charge will be assessed in the event Firm Peaking Energy is not returned.

Under the current rate methodology, rates for P–SMBP—ED firm power and firm peaking power service are designed to recover an annual revenue requirement that includes investment repayment, interest, purchase power, operation and maintenance, and other expenses within the allowable period.

Western is proposing to true up the base and drought adder components of the rate schedules and place new rate schedules into effect for the 5-year period, beginning January 1, 2015, through December 31, 2019. The proposed true up updates the base components to represent present costs and lowers the drought adder components to represent present drought costs. Over the past 5-year rate period, the P–SMBP costs included in the drought adder have decreased as the actual deficits taken were less than projected when the current charges were placed into effect. Additionally, there have been drought costs repaid ahead of schedule which decreased the drought deficit interest expense. Base costs increased during that same period due to a new 5-year cost evaluation period, new investments and replacements, and inflationary costs. A comparison of the current and proposed components is listed in Table 2.

TABLE 2—SUMMARY OF P–SMBP—ED RATE COMPONENTS

| | Existing charges under rate schedules P–SED–F11 and P–SED–FP11 as of January 1, 2010 | | | Proposed Charges under rate schedules P–SED–F12 and P–SED–FP12 as of January 1, 2015 | | |
|---|---|---|---|---|---|---|
| | Base component | Drought adder component | Total charge | Base component | Drought adder component | Total charge |
| Firm Capacity (/kWmonth) | $3.80 | $3.85 | $7.65 | $4.90 | $2.75 | $7.65 |
| Firm Energy (mills/kWh) | 9.53 | 9.52 | 19.05 | 12.33 | 6.72 | 19.05 |
| Firm Peaking Capacity ($/kWmonth) | $3.45 | $3.45 | $6.90 | $4.45 | $2.45 | $6.90 |
| Firm Peaking Energy (mills/kWh) 1/ | 9.53 | 9.52 | 19.05 | 12.26 | 6.79 | 19.05 |

1/Firm peaking energy is normally returned. This charge will be assessed in the event firm peaking energy is not returned.

Over the past 5 years, Western has conducted its annual process of reviewing the sufficiency of the drought adder. With the rate schedules set to expire December 31, 2014, and the requirement of a public process to place new rate schedules into effect, Western proposes to true up the base and drought adder components in the new rate schedules to current values. Updating the components does not change the overall charges. It only identifies what portion of the charge is driven by base and drought adder components.

**Legal Authority**

The proposed modifications to the rate schedules for firm power and firm peaking power service, resulting in a true up of the base and drought adder components described above, constitute a minor rate adjustment, as defined by 10 CFR part 903.2(f). Western determined it is not necessary to hold a public information or public comment forum and, instead, held an informal public meeting via webinar for this minor rate adjustment, pursuant to 10 CFR 903.17. Western will review all timely public comments and make amendments or adjustments to the proposal as appropriate. The proposed rate schedules will be forwarded to the Deputy Secretary of Energy for approval on an interim basis.

Western is establishing firm power and firm peaking power service rates for P–SMBP—ED under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00A, effective October 25, 2013, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate

adjustments (10 CFR part 903) were published on September 18, 1985.

**Availability of Information**

All studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Many of these documents and supporting information are also available on Western's Web site under the ''2015 Firm Rate Adjustment'' section located at *http://www.wapa.gov/ugp/rates/2015firmrateadjust.*

Western held an informal public meeting on May 2, 2014, via webinar to inform customers, Native American tribes, stakeholders, and other interested parties about the proposed minor rate adjustment. The webinar was recorded and posted to the above referenced Western Web site.

**Ratemaking Procedure Requirements**

*Environmental Compliance*

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.;* the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

*Determination Under Executive Order 12866*

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: July 23, 2014.

**Mark A. Gabriel,**

*Administrator.*

[FR Doc. 2014–18788 Filed 8–7–14; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R09–OAR–2014–0485; FRL–9914–85-Region 9]**

## Adequacy Status of Motor Vehicle Emissions Budgets in Submitted 8-Hour Ozone Attainment Plan for Sacramento Metro; California

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of adequacy.

**SUMMARY:** The Environmental Protection Agency (EPA) is notifying the public that the Agency has found that the motor vehicle emissions budgets (MVEBs) for ozone for the years 2014, 2017, and 2018 in the *Sacramento Regional 8-Hour Ozone Attainment Plan and Reasonable Further Progress Plan, 2013 SIP Revisions* (''2013 Sacramento Ozone Plan'') are adequate for transportation conformity purposes. The 2013 Sacramento Ozone Plan was submitted to EPA on December 31, 2013 by the California Air Resources Board (CARB) as a revision to the California State Implementation Plan (SIP) and includes an attainment demonstration for the 1997 8-hour ozone national ambient air quality standard. Upon the effective date of this notice of adequacy, the Sacramento Area Council of Governments and the U.S. Department of Transportation must use the MVEBs for future conformity determinations.

**DATES:** This finding is effective August 25, 2014.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3963 or *ungvarsky.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA sent a letter to CARB on July 25, 2014 stating that the MVEBs for oxides of nitrogen ($NO_X$) and volatile organic compounds (VOCs) in the submitted 2013 Sacramento Ozone Plan for the years of 2014, 2017, and 2018 are adequate. The adequate MVEBs are provided in the following table:

MOTOR VEHICLE EMISSIONS BUDGETS IN THE 2013 SACRAMENTO OZONE PLAN

| | $NO_X$ | | | VOC | | |
|---|---|---|---|---|---|---|
| Budget year | 2014 | 2017 | 2018 | 2014 | 2017 | 2018 |
| Tons per average summer weekday | 49 | 39 | 37 | 23 | 18 | 17 |

Receipt of the MVEBs in the 2013 Sacramento Ozone Plan was announced on EPA's transportation conformity Web site on May 20, 2014. We received no comments in response to the adequacy review posting. The finding is available at EPA's transportation conformity Web site: *http://www.epa.gov/otaq/state resources/transconf/adequacy.htm.*

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do 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 national ambient air quality standards.

The criteria by which we determine whether a SIP's MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4) which was promulgated in our August 15, 1997 final rule (62 FR 43780, 43781–43783). We have further described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 final rule (69 FR 40004, 40038), and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 25, 2014.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2014–18819 Filed 8–7–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2014–0359; FRL–9914–82–OW]**

### Proposed Information Collection Request; Comment Request; Underground Injection Control (UIC) Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Underground Injection Control Program'' (EPA ICR No. 0370.25, OMB Control No. 2040–0042) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before October 7, 2014.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OW–2014–0359 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.

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:** Robert E. Smith, Office of Ground Water and Drinking Water/Drinking Water Protection Division, 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–3895; fax number: 202–564–3756; email address: *smith.robert-eu@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* The Underground Injection Control (UIC) program under The Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water (USDWs) from contamination by injected fluids. Injected fluids include trillions of gallons of various types of fluids each year such as hazardous waste; oil field brines or produced water; mineral processing fluids; various types of industrial fluids; automotive, sanitary and other wastes; and carbon dioxide injected for geological sequestration. Owners or operators of underground injection wells must obtain permits, conduct environmental monitoring, maintain records and report results to the EPA or the State UIC primacy (primary enforcement) agency. States must report to EPA on permittee compliance and related information. The mandatory information is reported using standardized forms and annual reports; applicable regulations are codified in the Code of Federal Regulations (CFR) at 40 CFR Parts 144 through 148. The data are used by UIC authorities to ensure the protection of underground sources of drinking water.

*Form Numbers:* The forms are 7520–1, 7520–2A, 7520–2B, 7520–3, 7520–4, 7520–6, 7520–7, 7520–8, 7520–9, 7520–10, 7520–11, 7520–12, 7520–14, 7520–16, and 7520–17.

*Respondents/affected entities:* Owners or operators of underground injection wells and State UIC primacy agencies.

*Respondent's obligation to respond:* Mandatory (40 CFR Parts 144 through 148).

*Estimated number of respondents:* 53,772 (total).

*Frequency of response:* Annual, semi-annual and quarterly.

*Total estimated burden:* 1,304,027 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $194,842,061 (per year), includes $140,457,959 annualized capital or operation and maintenance costs.

*Changes in Estimates:* Possible increases in the total estimated respondent burden will be evaluated along with any public comments received on this notice.

Dated: July 30, 2014.

**Peter Grevatt,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 2014–18823 Filed 8–7–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9914–83–Region 5]**

### EPA Great Lakes Advisory Board; Notice of Charter Renewal

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Charter Renewal.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the EPA Great Lakes Advisory Board is a necessary committee which is in the public interest. Accordingly, the Advisory Board will be renewed for an additional two-year period. The purpose of the Advisory Board is to provide advice to the Administrator in her capacity as Chair of the Inter-Agency Task Force established per Executive Order 13340 (May 18, 2004), on matters related to Great Lakes restoration and protection. The Advisory Board's major objectives are to provide advice and

recommendations on: Great Lakes protection and restoration policy; long term goals and objectives for Great Lakes protection and restoration; annual priorities to protect and restore the Great Lakes that may be used to help inform budget decisions; and issues addressed by the Great Lakes Interagency Task Force. Inquiries may be directed to Rita Cestaric, U.S. Environmental Protection Agency, 77 W. Jackson, Chicago, IL 60604, Email address: *cestaric.rita@epa.gov,* Telephone number: (312) 886–6815.

Dated: July 23, 2014.

**Cameron Davis,**

*Senior Advisor to the Administrator.*

[FR Doc. 2014–18834 Filed 8–7–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9914–81–OEI]**

### Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Arkansas

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of the State of Arkansas' request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

**DATES:** EPA's approval is effective August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 15, 2013, the Arkansas Department of Environmental Quality (ADEQ) submitted an application titled ''Arkansas Department of Environmental Quality Electronic Portal System'' for revisions/modifications of its EPA-authorized programs under title 40 CFR. EPA reviewed ADEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Arkansas' request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 51, 70–71, 122, 144, 146, 262, 264–265, 270–271, and 279 is being published in the **Federal Register:**

Part 52—Approval and Promulgation of Implementation Plans;

Part 70—State Operating Permit Programs;

Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;

Part 147—State Underground Injection Control Programs; and

Part 272—Approved State Hazardous Waste Management Programs.

ADEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: July 30, 2014.

**Matthew Leopard,**

*Acting Director, Office of Information Collection.*

[FR Doc. 2014–18824 Filed 8–7–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9914–80–OEI]**

### Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of California

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Environmental Protection Agency (EPA's) approval of the State of California's request to revise its EPA Administered Permit Programs: The National Pollutant Discharge Elimination System EPA-authorized program to allow electronic reporting.

**DATES:** EPA's approval is effective on August 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application

and will use electronic document receiving systems that meet the applicable subpart D requirements.

On August 19, 2013, the California State Water Resources Control Board (CA SWRCB) submitted an application titled ''Storm Water Multiple Application and Report System'' for revision/modification of its EPA-authorized authorized Part 123 program under title 40 CFR. EPA reviewed CA SWRCB's request to revise its EPA-authorized Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision/modification set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve California's request to revise its Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program to allow electronic reporting under 40 CFR part 122 is being published in the **Federal Register**.

CA SWRCB was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Dated: July 30, 2014.

**Matthew Leopard,**

*Acting Director, Office of Information Collection.*

[FR Doc. 2014–18816 Filed 8–7–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9016–3]**

## 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 07/28/2014 Through 08/01/2014

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. 20140210, Draft EIS, NPS, NY,* Fire Island National Seashore Draft White-tailed Deer Management Plan, Comment Period Ends: 10/10/2014, Contact: Morgan Elmer 303–969–2317

*EIS No. 20140211, Final EIS, FHWA, OR,* US 97 Bend North Corridor Project, Review Period Ends: 09/08/2014, Contact: Michelle Eraut 503–316–2559

*EIS No. 20140212, Draft EIS, FERC, PA,* Multi-Project for Hydropower Licenses, Susquehanna River Hydroelectric Projects, Comment Period Ends: 09/29/2014, Contact: Emily Carter 202–502–6512

*EIS No. 20140213, Draft EIS, FHWA, AL,* I–10 Mobile River Bridge and Bayway Widening Project No. DPI–0030(005), Comment Period Ends: 11/07/2014, Contact: Mr. Mark D. Bartlett 334–274–6350

*EIS No. 20140214, Final EIS, AFS, OR,* Eden Ridge Timber Sales, Review Period Ends: 09/08/2014, Contact: Holly Witt 541–247–3688

*EIS No. 20140215, Final EIS, USACE, FL,* Central Everglades Planning Project, Review Period Ends: 09/08/2014, Contact: Dr. Gretchen Ehlinger 904–232–1682

*EIS No. 20140216, Second Final EIS, AFS, MT,* East Reservoir, Review Period Ends: 09/08/2014, Contact: Denise Beck 406–293–7773 x7504

*EIS No. 20140217, Draft Supplement, NNSA, TN,* Production of Tritium in a Commercial Light Water Reactor, Comment Period Ends: Contact: Curtis Chambellan 505–845–5073

*EIS No. 20140218, Final EIS, APHIS, 00,* Determinations of Nonregulated Status for 2, 4–D-Resistant Corn and Soybean Varieties, Review Period Ends: 09/08/2014, Contact: Sid Abel 301–851–3896

*EIS No. 20140219, Final EIS, USACE, NC,* NC–1409 (Military Cutoff Road) Extension and Proposed US 17 Homestead Bypass, Review Period Ends: 09/08/2014, Contact: Brad Shaver 910–251–4611

Dated: August 5, 2014.

**Dawn Roberts,**

*Management Analyst, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2014–18820 Filed 8–7–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 9914–89–OGC]**

## Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed consent decree to address a lawsuit filed by the Sierra Club in the United States District Court for the Northern District of California: *Sierra Club* v. *McCarthy,* Civil Action No. 3:14–cv–00964–JD (N.D. Cal.). On March 3, 2014, Plaintiff filed a complaint which alleged that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (''EPA''), failed to perform a mandatory duty to find that certain states failed to submit state implementation plans (''SIPs'') for named areas to address certain prevention of significant deterioration (''PSD'') program requirements for fine particulate matter, or $PM_{2.5}$. The proposed consent decree would establish deadlines for EPA to take some of these actions.

**DATES:** Written comments on the proposed consent decree must be received by *September 8, 2014.*

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2014–0585, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3244; fax number: (202) 564–5603; email address: *hogan.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Sierra Club seeking to compel the Administrator to take actions under CAA sections 110(k). Under the terms of the proposed consent decree, EPA would agree to sign a notice or notices by no later than August 15, 2014, finding that the States of Vermont, Wisconsin, and California (as to the North Coast Management

District) failed to submit SIP revisions addressing the $PM_{2.5}$ PSD increments and implementing regulations required by the final rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),'' 75 FR 64,864 (Oct. 20, 2010). The proposed consent decree also provides that if any of these States makes a complete submission addressing the requirements prior to August 15, 2014, then EPA's obligation to take the required action is automatically terminated.

Under the terms of the proposed consent decree, EPA will deliver notice of each action to the Office of the Federal Register for review and publication within 15 days of signature. In addition, the proposed consent decree outlines the procedure for the Plaintiff to request costs of litigation, including attorney fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

## II. Additional Information About Commenting on the Proposed Consent Decree

### *A. How can I get a copy of the consent decree?*

The official public docket for this action (identified by: EPA–HQ–OGC–2014–0585) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

### *B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. 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 submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 31, 2014.

**Patricia Embrey,**

*Acting Associate General Counsel.*

[FR Doc. 2014–18828 Filed 8–7–14; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9915–01-Region-4; CERCLA–04–2014–3764]**

## J.J. Seifert Machine Shop Superfund Site; Sun City, Hillsborough County, Florida; Notice of Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of settlement.

**SUMMARY:** Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with Pamela S. Ahlen, J.J. Seifert Land Company and J.J. Seifert Machine Co., Inc. concerning the J.J. Seifert Machine Shop Superfund Site located in Sun City, Hillsborough County, Florida. The settlement is based on a financial analysis and addresses liability for past and future costs concerning work being performed at the Site and allows for the sale of the property.

**DATES:** The Agency will consider public comments on the settlement until September 8, 2014. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate.

**ADDRESSES:** Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Environmental Protection Specialist using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- *Internet: www.epa.gov/region4/superfund/programs/enforcement/enforcement.html*
- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Paula V. Painter at 404/562–8887

Dated: July 29, 2014.

**Anita L. Davis,**

*Chief, Superfund Enforcement & Information Management Branch, Superfund Division.*

[FR Doc. 2014–18825 Filed 8–7–14; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: HHS–OS–0955–0003]**

### 60-Day Notice Template for Extension of Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** U.S. Department of Health and Human Services (HHS).

**ACTION:** Notice and request for comments. Office of the National Coordinator for Health Information Technology is requesting OMB approval for an extension.

**SUMMARY:** HHS, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

**DATES:** Consideration will be given to all comments received by October 7, 2014.

**ADDRESSES:** Submit comments by one of the following methods:

- *Web site: www.regulations.gov.* Direct comments to Docket ID OMB–2010–0021.
- *Email: Information.CollectionClearance@hhs.gov.*
- *Phone:* (202) 690–6162.

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic

mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

*Current Actions:* Extension of approval for a collection of information.

*Type of Review:* Extension.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government. [Eliminated Categories if appropriate.].

*Estimated Number of Respondents:* [Provide Average Annual Estimate].

Below we provide projected average estimates for the next three years:

*Average Expected Annual Number of activities:* 7.

*Average Number of Respondents per Activity:* 350.

*Annual responses:* 4,158.

*Frequency of Response:* Once per request.

*Average minutes per response:* 5.

*Burden hours:* 1,041.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection Regulations.gov.

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

**Darius Taylor,**

*Information Collection Clearance Officer.*

[FR Doc. 2014–18771 Filed 8–7–14; 8:45 am]

**BILLING CODE 4150–45–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10529]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services.

**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 October 7, 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–10529 Quarterly Medicaid and CHIP Budget and Expenditure Reporting for the Medical Assistance Program, Administration and CHIP

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 Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Quarterly Medicaid and CHIP Budget and Expenditure Reporting for the Medical Assistance Program, Administration and CHIP; *Use:* At the request of OMB, this action would consolidate form CMS–21 and –21B (OMB control number: 0938–0731), –37 (OMB control number: 0938–0101), and –64 (OMB control number: 0938–0067) into one new information collection request. This action also revises CMS–37 and –67 while CMS–21 and –21B remain unchanged.

Form CMS–21 and –21B provide CMS with the information necessary to issue quarterly grant awards, monitor current year expenditure levels, determine the allowability of state claims for reimbursement, develop Children's Health Insurance Program (CHIP) financial management information, provide for state reporting of waiver expenditures, and ensure that the federally established allotment is not exceeded. They are also necessary in the redistribution and reallocation of unspent funds over the federally mandated timeframes.

Form CMS–37 due dates are November 15, February 15, May 15 and August 15 of each fiscal year. While all submissions represent equally important components of the grant award cycle, the May and November submissions are particularly significant for budget formulation. The November submission introduces a new fiscal year to the budget cycle and serves as the basis for the formulation of the Medicaid portion of the President's Budget, which is presented to Congress in January. The February and August submissions are used primarily for budget execution in providing interim updates to our Office of Financial Management, the Department of Health and Human Services, the Office of Management and Budget and Congress depending on the scheduling of the national budget review process in a given fiscal year. The submissions provide us with base information necessary to track current year obligations and expenditures in relation to the current year appropriation and to notify senior managers of any impending surpluses or deficits.

Form CMS–64 is used to issue quarterly grant awards, monitor current year expenditure levels, determine the allowability of state claims for reimbursement, develop Medicaid financial management information provide for state reporting of waiver expenditures, ensure that the federally-established limit is not exceeded for HCBS waivers, and to allow for the implementation of the Assignment of Rights and Part A and Part B Premium (i.e., accounting for overdue Part A and Part B Premiums under state buy-in agreements)—Billing Offsets.

*Form Number:* CMS–10529 (OMB control number 0938-New); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 672; *Total Annual Hours:* 17,920. (For policy questions regarding this collection contact Abraham John at 410–786–4519).

Dated: August 5, 2014.

**Martique Jones,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2014–18808 Filed 8–7–14; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this Information Collection Request must be received no later than October 7, 2014.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* Bureau of Primary Health Care (BPHC) Uniform Data System (UDS).

OMB No. 0915–0193—Revision.

*Abstract:* The Uniform Data System (UDS) is the Bureau of Primary Health Care's (BPHC's) annual reporting system for HRSA-supported health centers. The UDS includes reporting requirements for Health Center Program look-alikes and grantees of the following programs: the Community Health Center program, the Migrant Health Center program, the Health Care for the Homeless program, and the Public Housing Primary Care program.

*Need and Proposed Use of the Information:* HRSA collects UDS data which are used to ensure compliance with legislative and regulatory requirements, improve health center performance and operations, and report overall program accomplishments. The data help to identify trends over time, enabling HRSA to establish or expand targeted programs and identify effective services and interventions to improve the health of underserved communities and vulnerable populations. UDS data are compared with national health-related data, including the National Health Interview Survey and National Health and Nutrition Examination Survey, to review differences between the health center patient populations and the U.S. population at large and those individuals and families who rely on the health care safety net for primary care. UDS data also inform Health Center programs, partners, and communities about the patients served by Health Centers. To meet these objectives, BPHC requires a core set of data collected annually. The UDS data collection for 2015 will be revised in two ways. A new line will be added to identify patients that are dually eligible for Medicare and Medicaid, and the existing diabetes clinical measure will be streamlined to align with the Healthy People 2020 national benchmark. Specifically, health centers will no longer report three categories, Hemoglobin A1c (Hba1c) less than 8

percent; Hba1c greater than or equal to 8 percent and less than or equal to 9 percent; and Hba1c greater than 9 percent. Health centers will report one category, Hba1c greater than 9 percent.

*Likely Respondents:* The respondents will be HRSA BPHC Health Center Program grantees and look-alikes.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized Burden Hours:

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Universal Report | 1,302 | 1 | 1302 | 82 | 106,764 |
| Grant Report | 499 | 1 | 499 | 18 | 8,982 |
| Total | 1,801 | | | | 115,746 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dated: August 1, 2014.

**Jackie Painter,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2014–18736 Filed 8–7–14; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Discretionary Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. App.), notice is hereby given of the following meeting:

*Name:* Discretionary Advisory Committee on Heritable Disorders in Newborns and Children

*Dates and Times:* September 11, 2014, 9:30 a.m. to 4:30 p.m.

September 12, 2014, 9:00 a.m. to 3:00 p.m.

*Place:* Webinar and In-Person, National Institute of Health, Natcher Conference Center (Building 45), 9000 Rockville Pike, Bethesda, MD 20892.

*Status:* The meeting will be open to the public with attendance limited to space availability. Participants also have the option of viewing the meeting via webinar. Whether attending in-person or via webinar, all participants must register for the meeting at *https://www.blsmeetings.net/ACHDNCSeptember2014/.* The registration deadline is Thursday, August 28, 2014, 11:59 p.m. Eastern Time. If there are technical problems gaining access to the Web site, please contact Anthony Rodell, Director of Client Relations, at *arodell@Seamon Corporation.com.*

*Purpose:* The Discretionary Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by Public Health Service Act (PHS), 42 U.S.C. 217a: Advisory councils or committees, was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee's recommendations regarding additional conditions/inherited disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel and constitute part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans are required to cover screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (i.e., policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

*Agenda:* The meeting will include: (1) Presentations from the Newborn Screening Translational Research Network and the Region 4 Genetics Collaborative on long-term follow up activities as they relate to newborn screening; (2) an update on the Mucopolysaccharidosis 1 (MPS–1) condition review; (3) presentations and discussion on national activities addressing timeliness of newborn screening; (4) a presentation on the Region 4 Stork (R4S) database that facilitates the clinical validation of cutoff target ranges for metabolic disorders by tandem mass spectrometry; (5) a presentation of the National Committee on Vital and Health Statistics' recommendations regarding the adoption of electronic standards for public health information exchanges; (6) a presentation on the Clinical Laboratory Improvement Amendments (CLIA) Program and Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule—Patients' Access to Test Reports; and (7) updates from the Laboratory Standards and Procedures, Follow-up and Treatment, and Education and Training subcommittees. Tentatively, the Committee is expected to review and/or vote on recommendations to the Secretary regarding educational activities that emphasize succinylacetone as the best marker for Tyrosinemia Type I screening, a condition on the Recommended Uniform Screening Panel (RUSP). This tentative vote does not involve any proposed addition of a condition to the RUSP.

Agenda items are subject to change as necessary or appropriate. The agenda, webinar information, Committee Roster,

Charter, presentations, and other meeting materials are located on the Advisory Committee's Web site at *http://www.hrsa.gov/advisory committees/mchbadvisory/heritable disorders.*

*Public Comments:* Members of the public may present oral comments and/or submit written comments. Comments are part of the official Committee record. The public comment period is tentatively scheduled for September 11, 2014. Advance registration is required to present oral comments and/or submit written comments at *https://www.bls meetings.net/ACHDNCSeptember2014/.* The registration deadline is Thursday, August 28, 2014, 11:59 p.m. Eastern Time. Written comments must be received by the deadline in order to be included in the September meeting briefing book. Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (i.e., parent, researcher, clinician, public health, etc.), and the topic/subject matter of comments. To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted. For additional information or questions on public comments, please contact Lisa Vasquez, Maternal and Child Health Bureau, Health Resources and Services Administration; email: *lvasquez@ hrsa.gov.*

*For More Information Contact:* Anyone interested in obtaining other relevant information should contact Debi Sarkar, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; email: *dsarkar@hrsa.gov.*

More information on the Advisory Committee is available at *http://www. hrsa.gov/advisorycommittees/mchb advisory/heritabledisorders.*

Dated: August 1, 2014.

**Jackie Painter,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2014–18737 Filed 8–7–14; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 2014.

The National Advisory Committee on Rural Health and Human Services will convene its seventy sixth meeting in the time and place specified below:

*Name:* National Advisory Committee on Rural Health and Human Services.

*Dates and Time:* September 24, 2014, 8:45 a.m.–5:00 p.m. September 25, 2014, 8:30 a.m.–5:30 p.m. September 26, 2014, 8:30 a.m.–11:00 a.m.

*Place:* Avera eHelm, 4500 N Lewis Ave, Sioux Falls, SD 57104, (605) 322–4669.

*Status:* The meeting will be open to the public.

*Purpose:* The National Advisory Committee on Rural Health and Human Services provides counsel and recommendations to the Secretary with respect to the delivery, research, development, and administration of health and human services in rural areas.

*Agenda:* Wednesday morning, at 8:45 a.m., the meeting will be called to order by the Chairperson of the Committee: The Honorable Ronnie Musgrove. The Committee will assess how telehealth coverage opportunities in rural areas are affected by the Affordable Care Act. The Committee will also examine the issue of rural domestic violence. The day will conclude with a period of public comment at approximately 4:45 p.m.

Thursday morning at approximately 8:30 a.m., the Committee will break into Subcommittees and depart for site visits to health care and human services providers in South Dakota and Minnesota. Subcommittees will visit the Pipestone County Medical Center and the Good Samaritan Society in Pipestone, Minnesota, and the Horizon Health Clinic in Howard, South Dakota. The day will conclude at the Avera eHelm with a period of public comment at approximately 5:15 p.m.

Friday morning at 8:30 a.m., the Committee will meet to summarize key findings and develop a work plan for the next quarter and the following meeting.

**FOR FURTHER INFORMATION CONTACT:** Steve Hirsch, MSLS, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, 17W29–C, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–0835, or fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Catherine Fontenot at the Office of Rural Health Policy (ORHP) via telephone at (301) 945–0897or by email at *cfontenot@ hrsa.gov.* The Committee meeting agenda will be posted on the Committee's Web site at *http://www. hrsa.gov/advisorycommittees/rural/.*

Dated: August 1, 2014.

**Jackie Painter,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2014–18735 Filed 8–7–14; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; 30-Day Comment Request

The Social Security Administration (SSA)—National Institutes of Health (NIH) Collaboration to Improve the Disability Determination Process: Calibration II, Predictive Validity Testing & Validation of Item Response Theory-Computer Adaptive Testing Tools (IRT–CAT) (CC)

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) 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 April 22, 2014, page 22507 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Clinical Center, 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: Daniel Hobbs, Management Analyst, Epidemiology & Biostatistics Section, Rehabilitation Medicine Department, Clinical Center, NIH, 6100 Executive Blvd. Suite 3C01, Bethesda, MD 20892, or call non-toll-free number (301) 496–3817 or Email your request, including your address to: *daniel.hobbs@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

*Proposed Collection:* The SSA–NIH Collaboration to Improve the Disability Determination Process: Calibration II, Predictive Validity Testing & Validation of IRT–CAT Tools, 0925– New, Clinical Center (CC), National Institutes of Health (NIH).

*Need and Use of Information Collection:* The Social Security Administration (SSA) entered into an interagency agreement (IAA) with the National Institutes of Health (NIH), Clinical Center (CC), Rehabilitation Medicine Department (RMD), to explore innovative methods of functional assessment to improve SSA's disability determination process. As part of its study, NIH recommended item response theory (IRT) coupled with computer adaptive testing (CAT) as a promising approach to efficiently and consistently capture claimant functional information to assist SSA adjudicators. IRT is a framework for the design, analysis, and scoring of tests, questionnaires, and similar instruments measuring abilities, aptitudes, and other variables. It is often the preferred method for the development of tests such as the Graduate Record Examination (GRE) and the Graduate Management Admission Test (GMAT).

Development of these instruments is an iterative process, involving sequential phases of study in the areas of item bank development, calibration, validation, reliability testing and replenishment of the item banks. CAT instruments for the Applied Cognition and Activities of Daily Living domains will undergo calibration; predictive validity will be examined; concurrent validity will be tested against legacy functional assessment instruments; reliability and sensitivity will be examined; and, the item banks will undergo replenishment to refine the scope of the questions.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 12,835.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Number of respondents | Frequency of response | Average time per response (in hours) | Annual hour burden |
|---|---|---|---|---|
| Calibration Phase | | | | |
| Survey 1—Screener Call (Not Interested) | 12,200 | 1 | 3/60 | 610 |
| Survey 1—Screener Call (Participate/Eligible) | 7,800 | 1 | 15/60 | 1,950 |
| Survey 1—Consent Form | 3,500 | 1 | 15/60 | 875 |
| SSA Claimant Survey 1 | 3,500 | 1 | 45/60 | 2,625 |
| Survey 2—Screener Call (Not Interested) | 500 | 1 | 3/60 | 25 |
| Survey 2—Screener Call (Participate Eligible) | 3,000 | 1 | 15/60 | 750 |
| Survey 2—Consent Form | 3,000 | 1 | 15/60 | 750 |
| SSA Claimant Survey 2 | 3,000 | 1 | 45/60 | 2,250 |
| Normative Population Survey 1 | 2,000 | 1 | 45/60 | 1,500 |
| Normative Population Survey 2 | 2,000 | 1 | 45/60 | 1,500 |

Dated: July 31, 2014.

**David Henderson,**

*Deputy Director, Clinical Center, NIH.*

[FR Doc. 2014–18777 Filed 8–7–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0049]**

### Agency Information Collection Activities: Request for Verification of Naturalization, Form N–25; Extension, Without Change, of a Currently Approved Collection

**ACTION:** 60-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until October 7, 2014.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0049 in the subject box, the agency name and Docket ID USCIS–2005–0036. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2005–0036;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

**SUPPLEMENTARY INFORMATION:**

**Comments**

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Verification of Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–25; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or Tribal Government. This form will allow U.S. Citizenship and Immigration Services (USCIS) to obtain verification from the courts that a person claiming to be a naturalized citizen has, in fact, been naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–25 is 1,000 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 250 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $500.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: August 4, 2014.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2014–18805 Filed 8–7–14; 8:45 am]

BILLING CODE 9111–97–P

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0063]**

### Agency Information Collection Activities: National Interest Waivers, Supplemental Evidence to I–140 and I–485, No Form; Extension, Without Change, of a Currently Approved Collection

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until October 7, 2014.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0063 in the subject box, the agency name and Docket ID USCIS–2008–0003. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2008–0003;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

**SUPPLEMENTARY INFORMATION:**

**Comments**

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of

your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This information Collection**

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* National Interest Waivers, Supplemental Evidence to I–140 and I–485.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection is 8,000 and the estimated hour burden per response is 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 16,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. All costs are captured in OMB Control Number 1615–0015.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: August 4, 2014.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2014–18807 Filed 8–7–14; 8:45 am]

**BILLING CODE 9111–97–P**

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0025]**

### Agency Information Collection Activities: Report of Diversion

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Report of Diversion. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before September 8, 2014 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (79 FR 22519) on May 22, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

*Title:* Report of Diversion.

*OMB Number:* 1651–0025.

*Form Number:* CBP Form 26.

*Abstract:* CBP Form 26, *Report of Diversion,* is used to track vessels traveling coastwise from U.S. ports to other U.S. ports when a change occurs in scheduled itineraries. This form is initiated by the vessel owner or agent to notify and request approval by CBP for a vessel to divert while traveling coastwise from a U.S. port to another U.S. port, or a vessel traveling to a foreign port having to divert to a U.S. port when a change occurs in the vessel itinerary. CBP Form 26 collects information such as the name and nationality of the vessel, the expected port and date of arrival, and information about any related penalty cases, if applicable. This information collection is authorized by the Jones Act (46 U.S.C. App. 883) and is provided for 19 CFR

4.91. CBP Form 26 is accessible at *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%2026_0.pdf*

*Current Actions:* This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 26.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 1,400.

*Estimated Number of Annual Responses per Respondent:* 2.

*Estimated Number of Total Annual Responses:* 2,800.

*Estimated Time per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 233.

Dated: August 4, 2014.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2014–18758 Filed 8–7–14; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5750–N–32]**

### 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 possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 31, 2014.

**Brian P. Fitzmaurice,**

*Director, Division of Community Assistance, Office of Special Needs Assistance Programs.*

[FR Doc. 2014–18497 Filed 8–7–14; 8:45 am]

**BILLING CODE 4210–67–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same, DN 3026.* The Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS,*[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Adrian Rivera and ARM Enterprises, Inc. on August 4, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain beverage brewing capsules, components thereof and products containing the same. The complaint name as respondents Solofill LLC of Houston, TX; DonGuan Hai Rui Precision Mould Co., Ltd., of China; Eko Brands, LLC of Woodinville, WA; Evermuch Technology Co., Ltd. of Hong Kong; Ever Much Company Ltd. of China; Melitta USA, Inc. of North Clearwater, FL; LBP Mfg. Inc. of Cicero, IL; LBP Packaging (Shenzhen) Co. Ltd. of China; Spark Innovators, Corp. of Fairfield, NJ; B. Marlboros International Ltd. (HK) of Hong Kong and Amazon.com, Inc. of Seattle, WA. The complainant requests that the Commission issue a permanent limited exclusion order and permanent cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3026'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Dated: August 5, 2014.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2014–18760 Filed 8–7–14; 8:45 am]

**BILLING CODE 7020–02–P**

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1145 (Review)]**

## Certain Steel Threaded Rod From China

### Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on certain steel threaded rod from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted this review on March 3, 2014 (79 FR 11827), and determined on June 6, 2014 that it would conduct an expedited review (79 FR 34783, June 18, 2014).

The Commission completed and filed its determination in this review on August 4, 2014. The views of the Commission are contained in USITC Publication 4483 (August 2014), entitled *Certain Steel Threaded Rod from China: Investigation No. 731–TA–1145 (Review).*

By order of the Commission.

Issued: August 4, 2014.

**Jennifer D. Rohrbach,**

*Supervisory Attorney.*

[FR Doc. 2014–18724 Filed 8–7–14; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1224 (Final)]**

## Ferrosilicon From Russia; Termination of Investigation

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** On July 31, 2014, the Department of Commerce published notice in the **Federal Register** of a final determination of sales at not less than fair value in connection with the subject investigation concerning Russia (79 FR 44393). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR § 207.40(a)), the antidumping duty investigation concerning ferrosilicon from Russia (Inv. No. 731–TA–1224 (Final)) is terminated.

**DATES:** Effective Date: July 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*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.*

**Authority:** This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR § 201.10).

By order of the Commission.

Issued: August 5, 2014.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2014–18806 Filed 8–7–14; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–14–027]**

## Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** August 14, 2014 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: None
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–499–500 and 731–TA–1215–1223 (Final)(Certain Oil Country Tubular Goods from India, Korea, Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam). The Commission is currently scheduled to complete and file its determinations and views of the Commission on August 25, 2014.

5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 6, 2014.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2014–18904 Filed 8–6–14; 11:15 am]

**BILLING CODE 7020–02–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

**AGENCY:** Judicial Conference of the United States Advisory Committee on Rules of Evidence.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

**DATES:** October 24, 2014.

**TIME:** 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** Duke University School of Law, Burdman Lounge, 210 Science Drive, Durham, North Carolina 27708.

**FOR FURTHER INFORMATION CONTACT:** Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: August 5, 2014.

**Jonathan C. Rose,**

*Secretary and Chief Rules Officer.*

[FR Doc. 2014–18804 Filed 8–7–14; 8:45 am]

**BILLING CODE 2210–55–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

**AGENCY:** Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

**DATES:** October 30–31, 2014.

**TIME:** 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle NE., Washington, DC 20544.

**FOR FURTHER INFORMATION CONTACT:** Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: August 5, 2014.

**Jonathan C. Rose,**

*Secretary and Chief Rules Officer.*

[FR Doc. 2014–18837 Filed 8–7–14; 8:45 am]

**BILLING CODE 2210–55–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

**AGENCY:** Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

**DATES:** November 4–5, 2014.

**TIME:** 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle NE., Washington, DC 20544.

**FOR FURTHER INFORMATION CONTACT:** Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: August 5, 2014.

**Jonathan C. Rose,**

*Secretary and Chief Rules Officer.*

[FR Doc. 2014–18839 Filed 8–7–14; 8:45 am]

**BILLING CODE 2210–55–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—High Density Packaging User Group International, Inc.

Notice is hereby given that, on July 11, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), High Density Packaging User Group International, Inc. (''HDPUG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Integral Technologies, Lake Forest, CA; Doosan Corporation Electro-PC Inc., San Jose, CA; and WUS PC Inc., Kunshan, Jiangsu, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, Sekisui, Tokyo, JAPAN, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDPUG intends to file additional written notifications disclosing all changes in membership.

On September 14, 1994, HDPUG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on February 27, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2014 (79 FR 17182).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2014–18764 Filed 8–7–14; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on July 8, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages

under specified circumstances. Specifically, Tetra Tech, Inc., Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on February 6, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 2014 (79 FR 17182).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2014–18765 Filed 8–7–14; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Mobile Alliance

Notice is hereby given that, on July 8, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Mobile Alliance (''OMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ARM Ltd., San Jose, CA; CallUp Net Ltd., Rosh Haayin, INDIA; Cellebrite, Petah Tikva, ISRAEL; Cisco Systems Inc., San Jose, CA; EQUADIS S.A., Carouge, SWITZERLAND; Eway Miami Corp., Buenos Aires, ARGENTINA; Fidens Consulting, Southbury, CT; Friendly Technologies, Ramat-Gan, ISRAEL; General Dynamics Broadband UK, Chippenham, Wiltshire, UNITED KINGDOM; GS1 Canada, Toronto, Ontario, CANADA; GS1 France, Issy Les Moulinea, FRANCE; GS1 Global Office, Brussels, BELGIUM; GS1 Hungary, Budapest, HUNGARY; GS1 Japan, Minato-ku, Tokyo, JAPAN; Harris Corporation, Lynchburg, VA; Icare Institute, Sierre, SWITZERLAND; Images in Space Ltd., Takapuna, Auckland, NEW ZEALAND; InterDigital Communications, Inc., King of Prussia, PA; iYogi Inc., New York, NY; Kochar Infotech, Amritsa, INDIA; KWISA, Gangnam-gu, Seoul, REPUBLIC OF KOREA; Metaswitch Networks Ltd., Enfield, UNITED KINGDOM; Mobile Tornado Group PLC, Afek Park, ISRAEL; Motorola Solutions Inc., Schaumburg, IL; NextNav LLC, Sunnyvale, CA; Openwave Messaging Inc., Redwood City, CA; Saphety Level—Trusted Services S.A., Lisboa, PORTUGAL; Stream Communications, Glasgow, UNITED KINGDOM; Telular, Chicago, IL; Thales, Toulouse, FRANCE; T-Mobile USA, Inc., Bellevue, WA; Wistron Corporation, New Taipei City, TAIWAN; and Zeebric, Inc., Newport Beach, CA; have been added as parties to this venture.

Also, Acision, Dublin, IRELAND; Adaptive Mobile Security Ltd., Dublin, IRELAND; AePona Ltd., Belfast, UNITED KINGDOM; Andrew LLC, Ashburn, VA; AuthenTec, Inc., Melbourne, FL; Beijing Leadtone Wireless Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Birdstep Technology AB, Stockholm, SWEDEN; Capricode, Oulu, FINLAND; Celltick Technologies Ltd., Herzliya, ISRAEL; Cinterion Wireless Modules GmbH, Munich, GERMANY; Cloudmark, Inc., San Francisco, CA; Converlogic, Garches, FRANCE; CoreMedia, Hamburg, GERMANY; DKI Technology Inc., Young deungpo-gu, Seoul, REPUBLIC OF KOREA; Ecrio Inc., Cupertino, CA; HTC Corp., Taoyuan County, TAIWAN; Ikivo AB, Stockholm, SWEDEN; Industrial Technology Research Institute, Hsinchu, TAIWAN; InnoPath Software, Alviso, CA; Interop Technologies, Ft. Meyers, FL; InvisiTrack, Inc., Annapolis, MD; Kii Corporation, Tokyo, JAPAN; Layer 7 Technologies, Vancouver, British Columbia, CANADA; LG Uplus Corp., Seoul, REPUBLIC OF KOREA; License Management International, LLC, Morgan Hill, CA; MediaTek Inc., Hsin-Chu City, TAIWAN; Mobile Leader Inc., Seoul, REPUBLIC OF KOREA; Motorola Mobility LLC, Schaumburg, IL; Movenda SpA, Roma, ITALY; Nokia Siemens Networks, Muenchen, GERMANY; NTT Advanced Technology Corporation, Musashino-shi, Tokyo, JAPAN; NVIDIA Corp., Sofia Antipolis, FRANCE; Oberthur Technologies S.A., Nanteroie Cedex, FRANCE; One2Many, Deventek, THE NETHERLANDS; Oracle America, Inc., Palo Alto, CA; Sensinode Ltd., Oulu, FINLAND; Shenzhen Coolpad Technologies Co., Ltd., Nanshan, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Sicap, Koeniz, SWITZERLAND; SK Planet, Seoul, REPUBLIC OF KOREA; TCT Mobile Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Telecommunication Metrology Center of MIIT, Beijing, PEOPLE'S REPUBLIC OF CHINA; Telenor ASA, NORWAY; TeliaSonera AB, Nacka Strand, SWEDEN; UL VS Ltd., Basingstoke, Hampshire, UNITED KINGDOM; UltiMobile, LLC., Orlando, FL; US Cellular, Chicago, IL; Viaccess SA, Paris, FRANCE; Volantis Systems Ltd., Guildford, Surrey, UNITED KINGDOM; Vox Mobili, Paris, FRANCE; Websync, Yeosam-dong, Gangnam-gu, REPUBLIC OF KOREA; and Wireless Zeta Telecomunicaciones, S.L., Sanse, SPAIN; have withdrawn as parties to this venture.

The following members have changed their names: mformation Technologies Inc. to Mformation Software Technologies, Inc., Edison, NJ; and Research In Motion to BlackBerry, Waterloo, Ontario, CANADA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on February 21, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2013 (78 FR 17430).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2014–18762 Filed 8–7–14; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States V. LM U.S. Corp Acquisition Inc. and Ross Aviation, LLC; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v.

*LM U.S. Corp Acquisition Inc. and Ross Aviation, LLC,* Civil Action No. 1:14–cv–01291. On July 30, 2014, the United States filed a Complaint alleging that the proposed acquisition by LM U.S. Corp Acquisition Inc. (doing business as Landmark Aviation ''Landmark'') of the fixed base operator (''FBO'') assets of Ross Aviation, LLC (''Ross'') at Scottsdale Municipal Airport (''SDL'') in Arizona would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Landmark to sell the FBO assets it is acquiring from Ross at SDL.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site, filed with the Court and, under certain circumstances, published in the **Federal Register**. Comments should be directed to William H. Stallings, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: 202–514–9323).

**Patricia A. Brink,**

*Director of Civil Enforcement.*

## United States District Court for the District of Columbia

*United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 8000, Washington, DC 20530, Plaintiff,* v. *LM U.S. Corp Acquisition Inc., 1500 City West Blvd., Suite 600, Houston, TX 77042* and *Ross Aviation, LLC, 3033 East First Avenue, Suite 815, Denver, CO 80206 Defendants.*

Case: 1:14–cv–01291
Judge: Royce Lamberth
Filed: 07/30/2014

## COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition by LM U.S. Corp Acquisition Inc. (with affiliated companies doing business as Landmark Aviation, ''Landmark'') of Ross Aviation, LLC (''Ross'') (collectively, ''Defendants'') and to obtain other equitable relief. The United States alleges as follows:

## I. NATURE OF THE ACTION

1. On April 19, 2014, Landmark and Ross signed an agreement for Landmark to acquire Ross's United States fixed base operators (''FBOs'') for approximately $330 million. FBOs provide flight support services—including fueling, ramp and hangar rentals, office space rentals, and other services—to general aviation customers. Landmark is the third largest fixed base operator in the United States and operates over 40 FBOs at airports around the country. Ross operates FBOs at 19 airports in the United States. Both Landmark and Ross operate FBOs at the Scottsdale Municipal Airport (''SDL'').

2. Landmark and Ross are the only two FBOs operating at SDL. They compete directly on price and quality of FBO services for general aviation customers. Thus, the proposed acquisition would eliminate this head-to-head competition and create an FBO monopoly at SDL. The proposed acquisition would also give Landmark the ability to raise prices and lower the quality of services at SDL for general aviation customers. Unless the transaction is enjoined, the proposed acquisition is likely to lessen competition substantially in the market for FBO services at SDL in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

## II. JURISDICTION AND VENUE

3. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Landmark and Ross provide FBO services to aircraft landing throughout the United States. This Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Defendants have consented to venue and personal jurisdiction in this District.

## III. DEFENDANTS AND THE PROPOSED TRANSACTION

6. LM U.S. Corp Acquisition Inc. is a Delaware corporation with its principal place of business in Houston, Texas. LM U.S. Corp Acquisition Inc. is a subsidiary of CP V Landmark II, L.P. CP V Landmark II, L.P. and CP V Landmark, L.P., which are both limited partnerships within the Carlyle Group, control all the companies doing business as Landmark Aviation. CP V Landmark II, L.P., CP V Landmark, L.P., and Carlyle Partners V, L.P. (collectively, ''Landmark'') are all limited partnerships within the Carlyle Group with the same or similar investors. Landmark owns and operates more than 40 FBO facilities in the United States, including its FBO operation at SDL, which it operates as Landmark Aviation–SDL.

7. Ross is a Delaware limited liability company with its principal place of business in Denver, Colorado. Ross owns and operates 19 FBO facilities in the United States, including its FBO operation at SDL, which it operates as Scottsdale AirCenter.

8. On April 19, 2014, Landmark and Ross executed a Transaction Agreement under which Landmark will acquire all of Ross's FBO assets for approximately $330 million.

## IV. TRADE AND COMMERCE

### *A. The Relevant Market*

9. FBO services include the sale of jet aviation fuel (''Jet A fuel'') and aviation gasoline (''avgas''), as well as related support services, to general aviation customers. FBOs usually do not charge separately for services such as conference rooms, pilot lounges, flight planning, and transportation. Instead, they recover the cost of these ancillary services in the price that they charge for fuel. FBOs often charge separately for hangar and office rentals, aircraft storage, tie-down and ground services, deicing, and catering.

10. The largest source of revenue for an FBO is fuel sales. FBOs sell Jet A fuel for jet aircraft, turboprops and helicopters, and avgas for smaller, piston-operated planes.

11. General aviation customers cannot obtain fuel, hangar, ramp or related services at SDL, except through the FBOs authorized to sell such products and services by the local airport authority. Consequently, general aviation customers landing at SDL have no option other than to use Landmark and Ross FBOs for these services. Obtaining FBO services at another airport would not provide an economically practical alternative for

these general aviation customers because they purposely select SDL due to its proximity to Scottsdale. Thus, a small but significant post-acquisition increase in the prices for fuel, hangar space, and other FBO services at SDL would not cause general aviation customers to switch to other airports in sufficient quantities to make such a price increase unprofitable.

12. Accordingly, the provision of FBO services to general aviation customers is a relevant product market and SDL is a relevant geographic market (i.e., a line of commerce and a section of the country) under Section 7 of the Clayton Act, 15 U.S.C. § 18.

*B. Anticompetitive Effects*

13. The market for FBO services at SDL is highly concentrated, with only two providers—Landmark and Ross. If Landmark acquires the Ross FBO facility, it will have a monopoly in the market for FBO services at SDL.

14. Competition between Landmark's and Ross's FBO facilities currently limits the ability of each to raise prices for FBO services. This head-to-head competition also forces each company to offer better service to customers. The proposed acquisition would eliminate the competitive constraint each imposes on the other.

15. Thus, the proposed acquisition would lead to a monopoly at SDL, which, in turn, would likely result in higher prices for FBO services and a lower quality of service for customers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

16. Successful entry into the provision of FBO services at SDL by a new competitor would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Entry sufficient to replace the market impact of Ross would be unlikely for several reasons. First, Landmark and Ross both hold long-term leases from SDL for their FBO Facilities. Additionally, the new FBO provider would need to get the approval of the airport authority, obtain permits, and construct facilities prior to beginning its operations at SDL. This process would require extensive lead time to complete and there is no guarantee that the new provider would be able to obtain the necessary approvals and permits. Thus, timely and successful entry at SDL by a new provider of FBO services would be unlikely to occur in response to a small but significant and non-transitory post-merger price increase.

## V. VIOLATION ALLEGED

17. The United States hereby incorporates paragraphs 1 through 16.

18. Unless enjoined, Landmark's proposed acquisition of Ross is likely to substantially lessen competition and restrain trade for FBO services at SDL in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways:

a. actual and potential competition between Landmark and Ross for FBO services at SDL will be eliminated;

b. competition for FBO services at SDL will be eliminated; and

c. prices for FBO services for general aviation customers at SDL will likely increase and quality of service will likely decrease.

## VI. REQUEST FOR RELIEF

19. The United States requests that:

a. Landmark's proposed acquisition of Ross's FBO facility at SDL be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. Defendants and all persons acting on their behalf be preliminarily and permanently enjoined and restrained from consummating the proposed transaction or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Landmark's and Ross's FBO facilities and assets at SDL;

c. the United States be awarded its costs for this action; and

d. the United States receive such other and further relief as the Court deems just and proper.

Dated this 30th day of July, 2014.

Respectfully submitted,
For Plaintiff United States:

/s/ _____
William J. Baer (D.C. BAR # 324723)
*Assistant Attorney General for Antitrust*

/s/ _____
David I. Gelfand
*Deputy Assistant Attorney General*

/s/ _____
Patricia A. Brink
*Director of Civil Enforcement*

/s/ _____
William H. Stallings (D.C. BAR #444924)
*Chief, Transportation, Energy & Agriculture Section*

/s/ _____
Caroline E. Laise
*Assistant Chief Transportation, Energy & Agriculture Section*

/s/ _____
Michelle A. Pionkowski*
Laura B. Collins
*Attorneys, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530, Telephone: (202) 598–2954, Facsimile: (202) 307–2784, E-mail: Michelle.Pionkowski@usdoj.gov*
Attorneys for the United States
*Attorney of Record

## United States District Court for the District of Columbia

*United States of America, Plaintiff,* v. *LM U.S. Corp Acquisition Inc.,* and *Ross Aviation, LLC, Defendants.*
Case: 1:14–cv–01291
Judge: Royce Lamberth
Filed: 07/30/2014

## COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

## I. NATURE AND PURPOSE OF THE PROCEEDING

Defendant LM U.S. Corp Acquisition Inc. (with affiliated companies doing business as Landmark Aviation, ''Landmark'') and Defendant Ross Aviation, LLC (''Ross'') (collectively, ''Defendants'') entered into an Agreement, dated April 19, 2014, pursuant to which Landmark will acquire the fixed base operators (''FBO'') of Ross Aviation for approximately $330 million. The United States filed a civil antitrust Complaint on July 30, 2014, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to combine the only providers of FBO services at Scottsdale Municipal Airport (''SDL''), thereby creating a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in both (1) higher prices for fuel and other FBO services and (2) a reduction in the quality of FBO services offered at SDL.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to sell Ross's FBO assets at SDL, which currently operate as a wholly owned subsidiary: Ross Scottsdale LLC (the ''Divestiture Assets''). Under the terms of the Hold Separate Stipulation and Order, Defendant Landmark will take certain steps to ensure that the Divestiture Assets are operated as a competitively independent, economically viable and

ongoing business concern that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

### *A. The Defendants and the Proposed Transaction*

LM U.S. Corp Acquisition Inc. is a Delaware corporation with its principal place of business in Houston, Texas. LM U.S. Corp Acquisition Inc. is a subsidiary of CP V Landmark II, L.P. CP V Landmark II, L.P. and CP V Landmark, L.P., which are both limited partnerships within the Carlyle Group, control all the companies doing business as Landmark Aviation. CP V Landmark II, L.P., CP V Landmark, L.P., and Carlyle Partners V, L.P. (collectively, ''Landmark'') are all limited partnerships within the Carlyle Group with the same or similar investors. Landmark owns and operates more than 40 FBO facilities in the United States, including its FBO operation at SDL, which it operates as Landmark Aviation–SDL.

Ross Aviation, LLC (''Ross'') is a Delaware limited liability company with its principal place of business in Denver, Colorado. Ross is a subsidiary of Genossenschaft Constanter, a Swiss company. Ross owns and operates 19 FBO facilities in the United States, including its FBO operation at SDL, which it operates as Scottsdale AirCenter.

The proposed transaction, as initially agreed to by Defendants on April 19, 2014, would result in Landmark's acquisition of Ross's United States FBO locations for $330 million. SDL is the only airport at which Landmark and Ross currently compete in the provision of FBO services. Defendants are the only two full-service FBOs operating at SDL, and successful entry into the provision of FBO services at SDL by a new competitor would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on July 30, 2014.

### *B. The Competitive Effects of the Transaction on the FBO Services Market*

#### 1. The Relevant Market

The Complaint alleges that the proposed transaction would eliminate competition in the provision of FBO services at SDL in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. FBOs are facilities located at airports that provide fuel and related support services to general aviation customers. General aviation customers include charter, private, and corporate aircraft operators, as distinguished from scheduled commercial passenger and cargo airline operators and military flying.

Fuel sales are the largest source of revenues for FBOs. FBOs often do not charge separately for services such as conference rooms, pilot lounges, newspapers, or baggage handling. Instead, they recover the cost of these services through fuel revenues. FBOs also derive income from hangar and office rentals, aircraft storage, tie-down and ground services, and deicing.

General aviation customers cannot obtain fuel, hangar, ramp, and related services at SDL except through an FBO authorized to sell such services by the local airport authority. Consequently general aviation customers departing from or landing at SDL have no option other than to use Landmark and Ross FBOs for these services. Obtaining FBO services at other airports in the Scottsdale region would not provide an economically practical alternative for these general aviation customers because many general aviation customers select SDL over other airports in the area for its proximity to Scottsdale. General aviation customers at SDL would not switch to other airports in the Scottsdale region in sufficient numbers to prevent anticompetitive price increases for fuel and other FBO services at SDL.

#### 2. The Proposed Merger Would Produce Anticompetitive Effects

Landmark and Ross are the only two providers for FBO services at SDL. Competition between them currently limits the ability of each to raise prices for FBO services. This head-to-head competition also forces each company to offer better service to general aviation customers at SDL. The proposed acquisition would eliminate the competitive constraint each provider imposes upon the other and lead to a monopoly at SDL. This would result in higher prices for fuel and other FBO services and a lower quality of services in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Successful entry into the provision of FBO services at SDL by a new competitor would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Entry sufficient to replace the market impact of Ross would be unlikely for several reasons. Landmark and Ross both hold long-term leases from SDL for their FBO Facilities. Additionally, the new FBO provider would need to get the approval of the airport authority, obtain permits, and construct facilities prior to beginning its operations at SDL. This process would require extensive lead time to complete and there is no guarantee that the new provider would be able to obtain the necessary approvals and permits. Thus, timely and successful entry at SDL by a new provider of FBO services would be unlikely to occur in response to a small but significant and non-transitory post-merger price increase.

## III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

### *A. Divestiture of Ross's FBO at SDL*

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the market for FBO services provided to general aviation customers at SDL by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires the Defendants to divest, as a viable ongoing business, the Divestiture Assets. The Divestiture Assets must be divested to Signature Flight Support Corporation (''Signature'') or to another acquirer in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly. In order to provide greater certainty and efficiency in the divestiture process, the United States has approved Defendants' proposed Acquirer, Signature Flight Support Corporation (''Signature''). If Defendants do not sell the assets to Signature, they shall cooperate with prospective purchasers to accomplish the divestiture expeditiously.

In antitrust cases involving acquisitions in which the United States requests a divestiture remedy, the United States seeks to require completion of the divestiture within the

shortest period of time reasonable under the circumstances. Section IV(A) of the proposed Final Judgment requires the Defendants to complete the divestiture within ten (10) days after the Court signs the Hold Separate Stipulation and Order. The proposed Final Judgment also provides that this time period may be extended one or more times by the United States in its sole discretion for a period not to exceed ninety (90) calendar days, and shall notify the Court in such circumstances. A prompt divestiture has the benefits of restoring competition lost as a result of the acquisition and reducing the possibility that the value of the assets will be diminished. Section V(B) of the Hold Separate Stipulation and Order specifies that the divestiture assets will be maintained as a viable business and that Landmark employees will not gain access to customer or supplier lists specific to the divestiture assets prior to divestiture.

Section IV(B) of the proposed Final Judgment requires the Defendants to furnish information to prospective acquirers in an attempt to sell the divestiture assets. In this instance, the United States has already approved Signature as an appropriate acquirer for the divestiture assets. If Defendants sell the divestiture assets to Signature, no additional time will be needed for the United States to approve the acquirer, and Defendants will not need to furnish information to prospective acquirers.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a Divestiture Trustee selected by the United States to effect the sale of the Divestiture Assets. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the Divestiture Trustee. The Divestiture Trustee's commission will be structured so as to incentivize the Divestiture Trustee to complete the divestiture as quickly as possible while trying to obtain the highest possible price for the Divestiture Assets. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States which set forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the Divestiture Trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the Divestiture Trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of FBO services at SDL.

*B. Notification*

Section XI of the proposed Final Judgment requires Landmark to provide advance notification of certain future acquisitions from entities providing FBO services that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The notification provision of the proposed Final Judgment is intended to inform the Division of transactions that raise competitive concerns similar to those remedied here, and if necessary, to seek to enjoin any transaction pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment provides that Landmark shall not directly or indirectly acquire any leases from, assets of, or interests in any entity providing FBO services at an airport in the United States where Landmark is providing FBO services, without prior notification to the United States. Notification is not required if the value of the assets, interests, or leases is $20 million or less, or if there is another full service FBO facility at the airport that is not involved in the transaction. The proposed Final Judgment requires that notification shall be provided within five (5) business days of entering into a definitive assumption or acquisition agreement and at least thirty (30) calendar days prior to acquiring any such interest. If Landmark formally requests approval for a lease transfer from an airport authority in writing prior to entering into an agreement, Landmark shall report this request to the Antitrust Division within two (2) days; however, the thirty (30) day waiting period shall not begin until the Antitrust Division receives the Notification and Report Form.

## IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

## V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

William H. Stallings
Chief, Transportation, Energy, and Agriculture Section
Antitrust Division
United States Department of Justice
450 5th St. NW
Suite 8000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits

against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Landmark's acquisition of Ross's FBO assets at SDL. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of FBO services at SDL. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review). 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. John Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

## VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 30, 2014

Respectfully submitted,

/s/ _____

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Michelle A. Pionkowski *
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U.S. Department of Justice
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[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, at *22 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

**United States District Court For the District Of Columbia**

*United States of America, Plaintiff,* v. *LM U.S. Corp Acquisition Inc., and* Ross Aviation, LLC, *Defendants.*
Case: 1:14–cv–01291
Judge: Royce Lamberth
Filed: 07/30/2014

## PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on July 30, 2014, the United States and Defendants, Defendant LM U.S. Corp Acquisition Inc. and Defendant Ross Aviation, LLC by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

### I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

### II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means Signature Flight Support Corporation, or another entity to whom Defendants divest the Divestiture Assets.

B. ''Landmark'' means Defendant LM U.S. Corp Acquisition Inc., a Delaware corporation with its headquarters in Houston, Texas, CP V Landmark L.P., CP V Landmark II, L.P., any party that acquires all or substantially all of the assets by which any of the foregoing (in the aggregate, with their subsidiaries taken as a whole) performs FBO Services, Carlyle Partners V, L.P., and their subsidiaries, divisions, groups, partnerships, joint ventures, directors, officers, managers, and employees.

C. ''Ross'' means Defendant Ross Aviation, LLC, a Delaware corporation with its headquarters in Denver, Colorado, its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees. One of Ross's wholly owned subsidiaries, Ross Scottsdale LLC, a Delaware limited liability corporation headquartered in Scottsdale, Arizona, operates the Divestiture Assets.

D. ''Signature'' means Signature Flight Support Corporation, a Delaware corporation with its headquarters in Orlando, FL, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''SDL Airport'' means Scottsdale Municipal Airport, located in Scottsdale, Arizona.

F. ''FBO Services'' means any or all services relating to providing fixed based operator services, including, but not limited to, selling fuel; leasing hanger, ramp, and office space; providing flight support services; performing maintenance; providing access to terminal facilities; or arranging for ancillary services such as limousines, rental cars, or hotels.

G. ''FBO Facilities'' means any and all tangible and intangible assets that comprise the business of providing FBO Services, including, but not limited to, all personal property, inventory, office furniture, materials, supplies, terminal space, hangars, ramps, general aviation fuel tank farms for jet aviation fuel and aviation gas, and related fueling and maintenance equipment, and other tangible property and all assets used exclusively in connection with the business of providing FBO Services; all licenses, permits, and authorizations issued by any governmental

organization relating to the business of providing FBO Services subject to licensor's approval or consent; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the business of providing FBO Services, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records, and all other records relating to the business of providing FBO Services; all intangible assets used in the development, production, servicing, and sale of FBO Services, including, but not limited to, all licenses and sublicenses, technical information, computer software and related documentation, know-how, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, and safety procedures for the handling of materials and substances.

H. ''Full Service FBO'' means a facility that provides FBO Services, including pumping fuel into aircraft, and sells all fuel types (Jet A and/or avgas) sold by FBOs at that airport.

I. ''Divestiture Assets'' means Ross Scottsdale LLC, a Delaware limited liability company, including all rights, titles and interests, including all fee, leasehold and real property rights in Ross's FBO Facilities at SDL Airport.

J. ''Proposed Transaction'' means Landmark's proposed acquisition of certain assets from Ross pursuant to the Transaction Agreement by and among Ross Aviation Holdco LLC, Ross Aviation, LLC, and LM U.S. Corp Acquisition Inc., dated April 19, 2014.

## III. Applicability

A. This Final Judgment applies to Landmark and Ross, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirer of the assets divested pursuant to this Final Judgment.

## IV. Divestitures

A. Defendants are ordered and directed, within ten (10) calendar days after the Court signs the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances.

B. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets. Following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

C. In the event Defendants are attempting to divest the Divestiture Assets to an Acquirer other than Signature, in accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation, management, and sale of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Defendant employee whose primary responsibility is the operation, management, and sale of the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset.

H. The foregoing Sections IV.C through IV.G shall not apply in the event that the acquirer of the Divestiture Assets is Signature pursuant to the Interest Purchase Agreement dated as of May 23, 2014 by and among Signature Flight Support Corporation, LM U.S. Corp Acquisition, Inc. and, as of the Closing, Ross Aviation, LLC.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in providing FBO Services at SDL Airport. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the provision of FBO Services at SDL Airport; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

## V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the

power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Landmark are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contains information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

**VI. Notice of Proposed Divestiture**

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon

objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

**VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Affidavits**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

**X. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XI. Notification**

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''), Defendant Landmark, without providing advance notification to the Antitrust Division, shall not directly or indirectly assume a lease from, acquire assets of, or acquire interest in any entity engaged in provision of FBO Services at an airport where Landmark is already providing FBO Services in the United States during the term of this Final Judgment, unless the assumption or acquisition (1) is valued at less than $20 million dollars or (2) at least one Full Service FBO, not involved in the transaction, provides FBO Services at the airport where the assumption or acquisition will take place.

Such notification shall be provided to the Antitrust Division in the same format as and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about the provision of FBO Services. Notification shall be provided within five (5) business days of entering into a definitive assumption or acquisition agreement and at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement. Should Landmark contact an airport authority formally requesting approval of a lease transfer in a transaction that would require the notification described in this paragraph prior to entering into a

definitive acquisition agreement, Landmark shall report that communication to the Division within two (2) business days, though the thirty (30) day waiting period shall not begin until the Division receives the information provided in the Notification and Report Form.

Early termination of the waiting period in this paragraph may be requested and may be granted by the Antitrust Division in its sole discretion. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

**XII. No Reacquisition**

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

**XIII. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIV. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

**XV. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____

United States District Judge

[FR Doc. 2014–18744 Filed 8–7–14; 8:45 am]

BILLING CODE 4410–11–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,756]**

### Bay Area Newsgroup East Bay, LLC., A Wholly Owned Subsidiary of California Newspaper Partnership, 2640 Shadelands Drive and 175 Lennon Lane, Walnut Creek, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 2012, applicable to workers of Bay Area News Group East Bay, LLC, a wholly owned subsidiary of California Newspapers Partnership, Walnut Creek, California. The Department's notice of determination was published in the **Federal Register** on August 23, 2012 (Volume 77 FR page 51066).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers' firm is engaged in activities related to the production of newspapers. The worker group is engaged in advertisement production, including graphic design.

New information from the company revealed that the subject firm has relocated from 2640 Shadelands Drive, Walnut Creek, California to 175 Lennon Lane, Walnut Creek, California.

The intent of the Department's certification is to include all workers of the firm who were adversely affected by a shift in production of newspapers to a foreign country. Based on these findings, the Department is amending this certification to also include the workers of 175 Lennon Lane, Walnut Creek, California.

The amended notice applicable to TA–W–81,756 is hereby issued as follows:

All workers of Bay Area News Group East Bay, LLC, a wholly owned subsidiary of California Newspapers Partnership, 2640 Shadelands Drive and 175 Lennon Lane, Walnut Creek, California, who became totally or partially separated from employment on or after June 15, 2011 through August 7, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC this 24th day of July, 2014.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–18794 Filed 8–7–14; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 18, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 18, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 31st day of July 2014.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

## APPENDIX

[10 TAA petitions instituted between 7/21/14 and 7/25/14]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 85434 | AT&T (Workers) | San Ramon, CA | 07/21/14 | 07/19/14 |
| 85435 | Boehringer Ingelheim (State/One-Stop) | Danbury, CT | 07/22/14 | 07/21/14 |
| 85436 | McKesson (State/One-Stop) | Cypress, CA | 07/22/14 | 07/21/14 |
| 85437 | Microsemi Corp—Western Region (State/One-Stop) | Garden Grove, CA | 07/22/14 | 07/21/14 |
| 85438 | Distinctive Industries (State/One-Stop) | Santa Fe Springs, CA | 07/22/14 | 07/21/14 |
| 85439 | Qualfon DSG (Workers) | Deposit, NY | 07/23/14 | 07/22/14 |
| 85440 | PCE Paragon Solutions (Company) | RTP, NC | 07/24/14 | 07/21/14 |
| 85441 | Keystone-Calumet, Inc. (State/One-Stop) | Chicago Heights, IL | 07/24/14 | 07/23/14 |
| 85442 | Harman International Industries, Incorporated (Workers) | Novi, MI | 07/24/14 | 07/23/14 |
| 85443 | Eclipse Manufacturing (State/One-Stop) | Sheboygan, WI | 07/24/14 | 07/23/14 |

[FR Doc. 2014–18795 Filed 8–7–14; 8:45 am]

BILLING CODE P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of July 21, 2014 through July 25, 2014.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*85,246, Kennametal, Inc., Lyndonville, Vermont. April 14, 2013.*
*85,308, Steri-Pharma LLC., Syracuse, New York. May 14, 2013.*
*85,314, Caraco Pharmaceutical Laboratories, Ltd., Detroit, Michigan. May 16, 2013.*
*85,318, Epic Technologies, LLC., Norwalk, Ohio. July 13, 2014.*
*85,318A, Leased Workers from Aerotek, Norwalk, Ohio. May 19, 2013.*
*85,372, Curtiss Wright Controls, South Bend, Indiana. June 13, 2013.*
*85,405, Harmonic Design, Inc., Poway, California. June 30, 2013.*
*85,408, Honeywell Analytics, Northford, Connecticut. June 30, 2013.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,020, FCI USA LLC, Etters, Pennsylvania.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*85,154, Xerox Imager Delivery Center, El Segundo, California.*
*85,194, Med-Fit Systems, Inc., Independence, Virginia.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*85,150, Clear, Palatine, Illinois.*
*85,231, Convergys, Denver, Colorado.*
*85,337, Dell Marketing L.P. and Dell USA LP, Plano, Texas.*
*85,342, North Cascade Mechanical, LLC., Blaine, Washington.*
*85,383, Knowledge Universe-U.S., Portland, Oregon.*
*85,384, Verizon California, Inc., Long Beach, California.*
*85,397, Accenture, LLP, Charlotte, North Carolina.*
*85,403, BAE Systems Aerospace & Defense Group, Inc., McKee, Kentucky.*
*85,403A, BAE Systems Aerospace & Defense Group, Inc., Annville, Kentucky.*

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,310, Murata Power Solutions, Inc., Mansfield, Massachusetts.
85,438, Distinctive Industries, Santa Fe Springs, California.

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

85,400, Startek, Greenwood Village, Colorado.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

85,198, West Point Products Acquisition, LLC, Washington, Pennsylvania.
85,224, Catholic Health Initiatives, Englewood, Colorado.
85,276, John Wiley and Sons, Inc., Indianapolis.
85,326, Bay Area Newsgroup East Bay, LLC, Walnut Creek, California.

I hereby certify that the aforementioned determinations were issued during the period of July 21, 2014 through July 25, 2014. These determinations are available on the Department's Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 31st day of July, 2014.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2014–18796 Filed 8–7–14; 8:45 am]

BILLING CODE 4510–FN–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration.

*Notice:* (14–077).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** Consideration will be given to all comments received within 30 days after from the date of this publication.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 7th Street NW., Washington, DC 20503, Attention: Desk Officer for NASA.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, (202) 358–2225.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The KEEP is a job shadowing program designed to provide students with career exploration opportunities under the mentorship of a NASA Kennedy Space Center (KSC) subject matter expert. Participation in the program is limited to students who are U.S. citizens

and 16 years or older. Interested students will submit a job shadowing application package, and designation of their top three choices for the job shadowing experience to include but not limited to biomedical, chemistry, computer science, engineering, meteorology, and physics. Interested students will also identify two science, math, or technology teachers associated with their current school of enrollment to submit recommendation forms. Students may request a shadowing opportunity for a period of 1–5 days. This information collection renewal includes updates to the application package for clarity and comprehensibility, and transitions from a paper submittal process to an electronic submittal process.

**II. Method of Collection**

Electronic.

**III. Data**

*Title:* Kennedy Educational Experiences program (KEEP).

*OMB Number:* 2700–0135.

*Type of Review:* Extension of currently approved information collection with change.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 60.

*Estimated Total Annual Burden Hours:* 30.6.

*Estimated Total Annual Cost to Respondents:* $0.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Frances Teel,**

*NASA PRA Clearance Officer.*

[FR Doc. 2014–18790 Filed 8–7–14; 8:45 am]

BILLING CODE 7510–13–P

## NATIONAL LABOR RELATIONS BOARD

### Sunshine Act Meetings: August 2014

**TIME AND DATES:**

All meetings are held at 2:00 p.m.
Tuesday, August 5;
Wednesday, August 6;
Thursday, August 7;
Tuesday, August 12;
Wednesday, August 13;
Thursday, August 14;
Tuesday, August 19;
Wednesday, August 20;
Thursday, August 21;
Tuesday, August 26;
Wednesday, August 27;
Thursday, August 28.

**PLACE:** Board Agenda Room, No. 11820, 1099 14th St. NW., Washington, DC 20570.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

**CONTACT PERSON FOR MORE INFORMATION:** Henry Breiteneicher, Associate Executive Secretary, (202) 273–2917.

Dated: August 6, 2014.

**William B. Cowen,**

*Solicitor.*

[FR Doc. 2014–18923 Filed 8–6–14; 4:15 pm]

BILLING CODE 7545–01–P

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB Review; Comment Request.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 79 FR 20244 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

**DATES:** Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

**ADDRESSES:** Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

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

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* National Science Foundation Science Honorary Awards

*OMB Control No.:* 3145–0035.

*Abstract:* The National Science Foundation (NSF) administers several honorary awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the National Science Board (NSB) Vannevar Bush Award, the NSB Public Service Award, the Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program, and the Presidential Awards for Excellence in Mathematics and Science Teaching (PAEMST) program.

In 2003, to comply with E-government requirements, the nomination processes were converted to electronic submission through the National Science Foundation's (NSF) FastLane system or via other electronic systems as described in the individual nomination process. Individuals can now prepare nominations and references through *www.fastlane.nsf.gov/honawards/.* First-time users must register on the Fastlane Web site using the link found in the upper right-hand corner above the ''Log In'' box before accessing any of the honorary award categories. The nominations for PAESMEM also may be submitted via *www.grants.gov.* Nominations and applications are submitted on the PAEMST portal at *www.PAEMST.org.*

*Use of the Information:* The Foundation has the following honorary award programs:

• *President's National Medal of Science.* Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that ''(t)he President shall . . . award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as . . . appropriate.''

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would ''receive recommendations made by any other nationally representative scientific or engineering organization.'' On the basis of these recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980.

The Committee has established the following considerations for selection of candidates:

a. The impact of an individual's body of work on the current state of his or her field of science or engineering;

b. Whether the individual's achievements are of an unusually significant nature in relation to the potential effects on the development of thought in his or her field of science or engineering;

c. Whether the nominee has demonstrated unusually distinguished service in the general advancement of science and/or engineering for the Nation, especially when accompanied by substantial contributions to the content of science;

d. The recognition of the nominee by peers within his or her community, and whether s/he is recognized for substantial impact in fields in addition to his/her discipline;

e. If the nominee has made contributions to innovation and industry;

f. Whether the nominee has demonstrated sustained influence on education through publications, teaching activities, outreach, mentoring, etc., and;

g. Whether the nominee's contributions have created significant positive impact for the Nation.

In 2003, the Committee changed the active period of eligibility to three years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the Committee.

Narratives are now restricted to three pages of text, as stipulated in the guidelines at: *https://www.fastlane.nsf.gov/honawards/medalHome.do.*

• *Alan T. Waterman Award.* Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86) and authorized NSF to ''establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering'' to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $1,000,000 over a five-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Public Law 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form letter to solicit these nominations. In 1980, a nomination form was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendation to the Director, NSF, and the National Science Board (NSB).

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more than seven years beyond receipt of the Ph.D. degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innovation, and significant impact on the field.

• *Vannevar Bush Award.* The NSB established the Vannevar Bush Award in 1980 to honor Dr. Bush's unique contributions to public service. The award recognizes an individual who, through public service activities in science and technology, has made an outstanding ''contribution toward the welfare of mankind and the Nation.''

The NSB *ad hoc* Committee on Honorary Awards annually solicits nominations from science, engineering and educational societies. A candidate must be a senior stateperson who is an American citizen and meets two or more of the following criteria:

1. Distinguished himself/herself through public service activities in science and technology.

2. Pioneered the exploration, charting, and settlement of new frontiers in science, technology, education, and public service.

3. Demonstrated leadership and creativity that have inspired others to distinguished careers in science and technology.

4. Contributed to the welfare of the Nation and mankind through activities in science and technology.

5. Demonstrated leadership and creativity that have helped mold the history of advancements in the Nation's science, technology, and education.

Nominations must include a narrative description about the nominee, a curriculum vitae (without publications), and a brief citation summarizing the

nominee's scientific or technological contributions to our national welfare in promotion of the progress of science. Nominations must also include two reference letters, submitted separate from the nomination through *www.fastlane.nsf.gov/honawards/.* Nominations remain active for three years, including the year of nomination. After that time, candidates must be renominated with a new nomination for them to be considered by the selection committee.

• *NSB Public Service Award.* The NSB Public Service Award Committee was established in November 1996. This annual award recognizes people and organizations that have increased the public understanding of science or engineering. The award is given to an individual and to a group (company, corporation, or organization), but not to members of the U.S. Government.

Eligibility includes any individual or group (company, corporation, or organization) that has increased the public understanding of science or engineering. Members of the U.S. Government are not eligible for consideration.

Candidates for the individual and group (company, corporation, or organization) award must have made contributions to public service in areas other than research, and should meet one or more of the following criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation and its communication to the public.
2. Encouraged others to help raise the public understanding of science and technology.
3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.
4. Contributed to the development of broad science and engineering policy and its support.
5. Influenced and encouraged the next generation of scientists+ and engineers.
6. Achieved broad recognition outside the nominee's area of specialization.
7. Fostered awareness of science and technology among broad segments of the population.

Nominations must include a summary of the candidate's activities as they relate to the selection criteria; the nominator's name, address and telephone number; the name, address, and telephone number of the nominee; and the candidate's vita, if appropriate (no more than three pages).

The selection committee recommends the most outstanding candidate(s) for each category to the NSB, which approves the awardees.

Nominations remain active for a period of three years, including the year of nomination. After that time, candidates must be renominated with a new nomination for them to be considered by the selection committee.

• Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program

In 1996, the White House, through the National Science and Technology Council (NSTC) and the Office of Science and Technology Policy (OSTP), established the Presidential Awards for Excellence in Science, Mathematics and Engineering Mentoring (PAESMEM) program. The program, administered on behalf of the White House by the National Science Foundation, seeks to identify outstanding mentoring efforts or programs designed to enhance the participation of groups (women, minorities and persons with disabilities as well as groups from low socioeconomic regions) underrepresented in science, mathematics and engineering. The awardees will serve as exemplars to their colleagues and will be leaders in the national effort to more fully develop the Nation's human resources in science, mathematics and engineering. This award is managed at NSF by the Directorate for Education and Human Resources (EHR).

The award will be made to U.S. citizens or U.S. permanent residents based on the following: (1) An individual who has demonstrated outstanding and sustained mentoring and effective guidance to a significant number of early career STEM professionals, students at the K–12, undergraduate, or graduate education level or (2) to an organization that, through its programming, has enabled a substantial number of students underrepresented in science, mathematics and engineering to successfully pursue and complete the relevant degree programs as well as mentoring of early career STEM professionals. Nominees must have served in a mentoring role for at least five years. Nominations are reviewed for impact, significance of the mentoring activity and quality of the mentoring activity. Nominations for organizational awards must demonstrate rigorous evaluation and/or assessment during the five-year period of the mentoring activity.

**Award Ceremony**

The awardees are hosted for two days in Washington, DC, for celebratory activities. Recipients of the PAESMEM award receive a monetary award in the amount of $10,000 from NSF and a commemorative Presidential certificate. If scheduling permits, the President meets with the mentors for a photo opportunity at the White House. The Director of OSTP and the Director of NSF present the awards to the mentors at an awards ceremony.

• Presidential Award for Excellence in Mathematics and Science Teaching

The Presidential Award for Excellence in Mathematics and Science Teaching (PAEMST) is the highest recognition that a kindergarten through 12th-grade mathematics or science teacher may receive for outstanding teaching in the United States. Enacted by Congress in 1983, this program authorizes the President to bestow 108 awards, assuming there are qualified applicants. In even-numbered years, nominations are accepted for elementary teachers (grades K–6); in odd-numbered years, secondary teachers (grades 7–12) are nominated. This award is managed at NSF by the Directorate for Education and Human Resources (EHR).

**Nomination Criteria**

A teacher may be nominated by a principal, another teacher, students, members of the community, or the general public. Self-nominations are allowed. Awardees must be either U.S. Citizens or U.S. Permanent Residents. A Nominee must meet the following criteria to apply:

• Be highly qualified as deemed by their states, districts, or schools;
• Teach in one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the four U.S. territories, including the Department of Defense Schools (DoDEA).
• Hold a degree or appropriate credentials in the category for which they are applying.
• Be a full-time employee of the school or school district.
• Have at least 5 years of mathematics or science teaching (including computer science) experience prior to application.
• Teach mathematics or science at the kindergarten through 6th grade level or at the 7th through 12th grade level in a public or private school.
• Not have received the national PAEMST award in any prior competition or category.

**Application Process**

• Applicants complete a 12-page written document on five dimensions of outstanding teaching (content knowledge, pedagogy, assessment, leadership and professional development) and submit a video of one

class. Three letters of reference including one from a school official are required, along with a resume or biographical sketch.

• The applicant has a 7-month period (October to May) to complete applications and submit them for state review. The nomination period is from October to April.

**Review of Nominations**

• State coordinators convene state selection committees of prominent mathematicians, scientists, mathematics and science educators, and past awardees to select up to five mathematics and five science finalists for recognition at the state level and for submission to NSF. To ensure consistency, state selection committees review their applications using the same criteria and scoring information that was approved by OSTP.

• NSF (EHR) convenes a National Selection Committee of prominent mathematicians, scientists, mathematics and science educators, and past awardees that review the application packets of the state finalists and make recommendations to NSF. NSF reviews these recommendations and recommends one awardee in both mathematics and science for all eligible jurisdictions, when possible, to OSTP. Alternatively, NSF may recommend two awardees from a discipline in a jurisdiction, when warranted.

**Award Ceremony**

The awardees are hosted for 3–4 days in Washington, DC, for a variety of professional development sessions and celebratory activities. Each awardee receives a citation signed by the President and $10,000 from NSF. If scheduling permits, the President meets the teachers for a photo opportunity at the White House. The Director of OSTP and the Director of NSF present the citations to the teachers at an awards ceremony. Awardees also have the opportunity to meet their congressional representatives and education representatives from other federal agencies.

*Estimate of Burden:* These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, across all the programs, it is estimated that each submission will average 19 hours per respondent. If the nominator is thoroughly familiar with the disciplinary background of the nominee, time spent to complete the nomination may be considerably reduced.

*Respondents:* Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

*Estimated Number of Responses per Award:* 1782 responses, broken down as follows: For the President's National Medal of Science, 80; for the Alan T. Waterman Award, 70; for the Vannevar Bush Award, 12; for the Public Service Award, 20; for the PAESMEM, 200; and 1400 for the PAEMST.

*Estimated Total Annual Burden on Respondents:* 41,080 hours, broken down by 1,600 hours for the President's National Medal of Science (20 hours per 80 respondents); 1,400 hours for the Alan T. Waterman Award (20 hours per 70 respondents); 180 hours for the Vannevar Bush Award (15 hours per 12 respondents); 300 hours for the Public Service Award (15 hours per 20 respondents); 4,000 hours for the PAESMEM (20 hours per 200 respondents); and 33,600 hours for the PAEMST (24 hours per 1400 respondents).

*Frequency of Responses:* Annually.

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

Dated: August 4, 2014.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2014–18728 Filed 8–7–14; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received under the Antarctic Conservation Act of 1978 (P.L. 95–541)

**AGENCY:** National Science Foundation

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 8, 2014. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Li Ling Hamady, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

**SUPPLEMENTAL INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant* Permit Application: 2015–005

Matthew Lazzara

1225 W Dayton St

Madison, WI 53706

Activity for Which Permit is Requested

ASPA Entry; The applicant wishes to enter Cape Hallett ASPA to retrieve data collected at an already installed weather station and to perform minor maintenance and updates to the station.

Location

ASPA 106 Cape Hallett, Northern Victoria Land, Ross Sea

Dates

November 10–November 20, 2014

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2014–18780 Filed 8–7–14; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0163]**

### Setpoints for Safety-Related Instrumentation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; extension of comment period and correction.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on July 11, 2014, announcing the release of draft regulatory guide (DG), DG–1141, ''Setpoints for Safety-Related Instrumentation,'' for a 60 day public comment period. This action is being taken to correct the Agencywide Documents Access and Management System (ADAMS) Accession number for DG–1141. The document at the corrected ADAMS number includes editorial changes that were not included in the previously referenced version of DG–1141, but there are no technical changes. Due to this error, the NRC is extending the comment period from September 9, 2014, to October 10, 2014.

**DATES:** This correction is effective immediately. Submit comments by October 10, 2014. Comments received after this date will be considered if practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0163 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0163. 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 obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft regulatory guide is available electronically in ADAMS under Accession No. ML081630179. The regulatory analysis may be found in ADAMS under Accession No. ML101820157.
- *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:** Paul J. Rebstock, telephone: 301–415–7000, email: *paul.rebstock@nrc.gov* or Mark Orr, telephone: 301–415–7000, email: *Mark.Orr@nrc.gov,* both of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:** In the FR on July 11, 2014, in FR Doc. 2014–16165, on page 40164, in the first column, third paragraph under the heading ''I. Obtaining Information and Submitting Comments,'' the ADAMS Accession number ''ML14149A361'' is corrected to read ''ML081630179.''

Dated at Rockville, Maryland, this 31st day of July 2014.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2014–18757 Filed 8–7–14; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[EA–13–105; NRC–2014–0186]**

### In the Matter of Geisser Engineering Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Order; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an order imposing a civil monetary penalty to Geisser Engineering Corporation. The order requires Geisser Engineering Corporation to pay a civil penalty in the amount of $8,400.

**DATES:** *Effective Date:* See attachment.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0186 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0186. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that 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:** Thomas Marenchin, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2979, email: *Thomas.Marenchin@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the Order and appendix are attached.

Dated at Rockville, Maryland, this 31st day of July 2014.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Acting Director, Office of Enforcement.*

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

| | |
|---|---|
| Geisser Engineering Corporation) | Docket No. 15000038 |
| Riverside, Rhode Island | License No.: RI 3L–050–01 EA–13–105 |

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Geisser Engineering Corporation (GEC) is the holder of a materials license issued by the State of Rhode Island, an NRC Agreement State. The Rhode Island license authorizes the possession, use, and storage of portable moisture density gauges containing radioactive material

within the State of Rhode Island. GEC, as holder of a State license, may perform work authorized by its license in other States or Federal jurisdictions provided GEC files for reciprocity with the appropriate regulatory authority.

II

An inspection of the GEC's activities was conducted on May 9, 2012, with continued in-office review through August 15, 2013. The inspection identified one violation involving multiple examples of GEC's failure to file for reciprocity with the U.S. Nuclear Regulatory Commission (NRC) prior to conducting work in NRC jurisdiction. In addition to the inspection activities, the NRC Office of Investigations conducted an investigation to determine whether a senior official of GEC deliberately engaged in the use of licensed material in areas of NRC jurisdiction without filing for reciprocity. The investigation concluded that the president and owner of GEC deliberately engaged in the use of licensed material in the State of Connecticut and at the Newport Naval Station in Rhode Island, areas of NRC jurisdiction, without filing for reciprocity with the NRC. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon GEC by letter dated March 20, 2014. The Notice states the nature of the violation, the provision of the NRC's requirements that GEC violated, and the amount of the civil penalty proposed for the violation. GEC responded to the Notice in a letter dated April 15, 2014. In its response and in subsequent communications with the NRC, GEC acknowledged the violation, but disputed the willful aspect of the violation (the willful aspect of the violation will be addressed in a separate correspondence) and requested that the NRC mitigate the civil penalty. Specifically, in an email correspondence dated April 30, 2014, the president of GEC stated, in part, that GEC was seeking relief from the proposed civil penalty due to the unexpected payment of a fine to the Commonwealth of Massachusetts (Commonwealth) for GEC's failure to file for reciprocity prior to using a nuclear density gauge in the Commonwealth's jurisdiction. The president also stated that payment of the proposed NRC civil penalty would pose a financial hardship for GEC.

III

After consideration of GEC's response and statement of fact, explanation, and argument for mitigation contained therein, the NRC has determined, as set forth in the Appendix to this Order, there is an adequate basis to reduce the civil penalty for the associated NRC violation, that the violation occurred as stated, that the amount of the proposed penalty should be reduced by $2800 (25%), and a civil penalty in the amount of $8,400 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT: GEC pay a civil penalty in the amount of $8,400 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time payment is made, GEC shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 2.202, GEC must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of the date of this Order. In addition, GEC may demand a hearing on all or part of this Order. Any other person adversely affected by this Order may request a hearing on this Order within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, NRC, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007, as amended by 77 FR 46562, August 3, 2012), codified in pertinent part at 10 CFR Part 2, Subpart C. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form available from the NRC's Electronic Information Exchange (EIE). In order to serve documents through EIE, users will be required to install a web browser plug-in from the NRC Web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

After the Office of the Secretary has created a docket and a participant has obtained a digital ID certificate, then the participant may submit a demand for hearing or request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-*

*submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

If a person other than GEC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f). If a hearing is requested by GEC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date this Order is issued without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

If payment has not been made by the time specified above, the matter may be referred to the Attorney General for further action, including collection.

Dated at Rockville, Maryland, this 31st day of July 2014

For the Nuclear Regulatory Commission

Patricia K. Holahan, Ph.D., Acting Director Office of Enforcement

APPENDIX

EVALUATION AND CONCLUSION

On March 20, 2014, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation of U.S. Nuclear Regulatory Commission (NRC) requirements involving the Geisser Engineering Corporation's (GEC's) failure to file for reciprocity prior to conducting work in NRC jurisdiction. The violation was identified during an NRC inspection. GEC responded to the Notice in a letter dated April 15, 2014. GEC acknowledged the violation, but requested mitigation of the civil penalty assigned to GEC. The NRC's evaluation and conclusion regarding GEC's request to mitigate the civil penalty are as follows:

*Restatement of Violation as provided in the Notice (March 20, 2014)*

During an NRC inspection conducted between May 9, 2012, and August 15, 2013, and an investigation initiated on June 20, 2012, and completed on April 26, 2013, multiple occurrences of a violation of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

10 CFR 30.3 requires, in part, that except for persons exempt as provided in this part and part 150 of this chapter, no person shall own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in 10 CFR 30.

10 CFR 150.20(a) states, in part, that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in Non-Agreement States and areas of exclusive Federal jurisdiction within Agreement States, subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in Non-Agreement States shall, at least 3 days before engaging in each such activity, file a submittal containing an NRC Form 241, ''Report of Proposed Activities in Non-Agreement States,'' a copy of its Agreement State specific license, and the appropriate fee, with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above, between October 21, 2009, and June 23, 2011, Geisser Engineering Corporation, which is authorized for possession and use of radioactive material under a Rhode Island Agreement State license, used portable devices containing byproduct material within NRC jurisdiction on 22

occasions without submitting NRC Form 241, a copy of its Agreement State specific license, and the required fee for calendar years 2009, 2010, and 2011, with the Regional Administrator of the appropriate NRC regional office.

This is a Severity Level II violation. (Section 6.9) Civil Penalty—$11,200 (EA–13–105)

*GEC's Response to the Violation*

In its letter dated April 15, 2014, GEC acknowledged the violation, but disagreed with the NRC's conclusion that the GEC president willfully (i.e., deliberately) caused the violation. The NRC's re-evaluation of the willful aspect of the violation is addressed in a separate correspondence to the president of GEC.

*Summary of GEC's Request for Mitigation of Civil Penalty Amount*

In its response, GEC requested relief from the civil penalty and requested that the NRC consider the penalty imposed on GEC by the Commonwealth of Massachusetts for the use of a nuclear density gauge in its jurisdiction without filing for reciprocity.

In the April 15, 2014, letter, and in an email correspondence dated April 30, 2014, GEC requested relief from the proposed civil penalty due to the unexpected payment to the Commonwealth of Massachusetts for the use of a nuclear density gauge in its jurisdiction without filing for reciprocity. Specifically, GEC stated that payment of the additional NRC proposed civil penalty would pose a financial hardship for GEC. To support its request, on May 5, 2014, GEC submitted by email GEC's tax returns for calendar years 2011 and 2012.

*NRC Evaluation of GEC's Request for Mitigation of Civil Penalty Amount*

In response to GEC's request, the NRC reviewed GEC's financial information, the documentation included as part of the inspection and investigation, and the applicable enforcement guidance to determine the appropriate action.

The Enforcement Policy Section 2.3.4 allows the use of discretion in application of a Civil Penalty, including a secondary consideration of the licensee's ability to pay. Specifically, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business. However, the Enforcement Policy Section 3.6 also states that one of the civil penalty assessment factors to be considered in applying discretion is the presence of willful behavior that caused a noncompliance with NRC requirements in order to obtain an economic benefit. The NRC determined that Mr. Geisser, President of GEC, acted deliberately and provided GEC an economic benefit of not paying NRC reciprocity fees for calendar years 2009, 2010, and 2011. The reciprocity fees for those years provided GEC an economic benefit of approximately $6,000.

In the NRC's evaluation of GEC's request, the NRC considered the potential financial implications and hardships that payment of the proposed civil penalty would place on GEC, the financial penalty taken previously against GEC by the Commonwealth of Massachusetts, and the economic benefit GEC received for not complying with NRC requirements. Specifically, the NRC considered that a substantial financial penalty has already been imposed on GEC by the Commonwealth for the same violation during the same time-frame, although in different jurisdictions, and that payment of the proposed NRC civil penalty may pose a financial hardship for GEC.

The NRC determined that GEC provided an adequate basis that the NRC civil penalty may pose a financial hardship for GEC. However, while some reduction of the full civil penalty is warranted, the NRC also considered that the civil penalty should account for the economic benefit that GEC gained by not complying with NRC requirements to file for reciprocity with the NRC and pay the required fees.

*NRC Conclusion*

Based on its evaluation, the NRC has concluded that the violation occurred as stated and that GEC provided an adequate basis for mitigation of the civil penalty. Consequently, a civil penalty in the amount of $8,400 is imposed.

[FR Doc. 2014–18815 Filed 8–7–14; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2014–0187]**

## Treatment of Natural Phenomena Hazards in Fuel Cycle Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft generic letter; public meeting and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on a draft generic letter to request information from licensees to address the treatment of natural phenomena hazards in fuel cycle facilities. The NRC has determined that facility-specific information is necessary to confirm that fuel cycle facilities are in compliance with appropriate regulatory requirements. The NRC will use information submitted by licensees in response to the generic letter if additional regulatory action is warranted.

**DATES:** Submit comments by November 6, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0187. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Marcano, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–287–9063, email: *Jonathan.Marcano@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2014–0187 when contacting the NRC about the availability of information for this action. You may obtain 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–2014–0187.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select

''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2014–0187 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

The NRC is issuing draft Generic Letter 2013 XX–XX: ''Treatment of Natural Phenomena Hazards In Fuel Cycle Facilities'' (ADAMS Accession No. ML13157A158), to request information from addressees to demonstrate if compliance is being maintained with the regulatory requirements and applicable license conditions regarding the treatment of natural phenomena events in the facilities' safety assessments; and to determine if additional NRC regulatory action is necessary to ensure that licensees are in compliance with their current licensing basis and existing NRC regulations.

On March 11, 2011, the Tohoku-Taiheiyou-Oki earthquake occurred near the east coast of Honshu, Japan. This magnitude 9.0 earthquake and the subsequent tsunami caused significant damage to at least four of the six units of the Fukushima Dai-ichi nuclear power station and, as a result, there was a loss of offsite and onsite electrical power systems.

On March 23, 2011, the Chairman of the NRC, via Tasking Memorandum—COMGBJ–11–0002, ''NRC Actions Following the Events in Japan,'' directed the NRC's Executive Director for Operations to establish the NRC Near-Term Task Force (NTTF) to evaluate available technical and operational information from the events in Japan following the March 11, 2011, earthquake and tsunami at the Fukushima Dai-ichi nuclear power station. The NTTF was tasked to consider lessons learned from the event and to develop recommendations to improve the regulatory systems for reactors in the United States and their applicability to licensed facilities other than power reactors.

On July 12, 2011, in light of the accident at the Fukushima Dai-ichi nuclear power plant, the NTTF presented a set of recommendations as a result of a systematic and methodical review of NRC processes and regulations applicable to nuclear power reactors in the United States (ADAMS Accession No. ML111861807). The NTTF recommendations are intended to clarify and strengthen the regulatory framework for protection against natural disasters, mitigation and emergency preparedness of nuclear power reactors in the United States.

For fuel cycle facilities, in light of the lessons learned from the accident at the Fukushima Dai-ichi nuclear power plant, the staff performed a systematic evaluation and inspection of selected fuel cycle facilities to confirm that licensees were in compliance with regulatory requirements and license conditions; and to evaluate their readiness under natural phenomena hazards (NPH) events and other licensing bases events related to NPH. The staff's assessment considered the NTTF recommendations to determine whether additional regulatory actions by the NRC are warranted.

The staff completed inspections at selected fuel facilities and the results were used to perform a systematic evaluation of the processes and regulations applicable to fuel facilities. The results of the evaluation allow the staff to conclude that the current regulatory approach and requirements of these licensees continues to serve as a basis for reasonable assurance of adequate protection of public health and safety. However, the staff identified generic issues regarding compliance with the current regulatory framework with regards to the treatment of certain natural phenomena events in the facilities (uranium conversion, enrichment and fuel fabrication) safety assessments. The NRC is issuing this draft generic letter to request information from licensees to verify that compliance is being maintained with regulatory requirements and license conditions regarding the treatment of natural phenomena events.

## III. Cumulative Effects of Regulation

The NRC is considering the cumulative effects of regulation (CER) as they relate to this Generic Letter. The CER considers the challenges licensees face in addressing the implementation of new regulatory positions, programs, and requirements (e.g., rulemaking, guidance, backfits, inspections). The CER initiative stems from the total burden imposed on licensees by the NRC from simultaneous or consecutive regulatory actions that can adversely affect the licensee's capability to implement those requirements while continuing to operate or construct its facility in a safe and secure manner. The NRC proposed several rulemaking process enhancements to address CER in SECY–11–0032, ''Consideration of the Cumulative Effects of Regulation in the Rulemaking Process,'' dated October 11, 2011 (ADAMS Accession No. ML112840466). In SECY–12–0137, ''Implementation of the Cumulative Effects of Regulation Process Changes,'' dated October 5, 2012 (ADAMS Accession No. ML12223A162) built upon the recommendations in SECY–11–0032. In its Staff Requirements Memorandum to SECY–12–0137 (ADAMS Accession No. ML13071A635), the Commission directed the staff to, among other items, ''continue to develop and implement outreach tools that will allow NRC to consider more completely the overall impacts of multiple rules, orders, generic communications, advisories, and other regulatory actions on licensees and their ability to focus effectively on items of greatest safety importance.''

With regard to this generic letter, the NRC requests that licensees comment about any CER challenges they may face. Specifically, the NRC requests comment on the following questions:

a. In light of any current or projected cumulative effects, does this generic letter request provide sufficient time for licensees to respond with the information requested, including any

need to develop this information through supporting engineering calculation or analyses?

b. If a current or projected cumulative effect poses a significant challenge, what should be done to address it? For example, if more time is required to develop and provide the information, what period of time is sufficient? Are there equally effective alternatives to providing the requested information to the NRC that reduce the cumulative effects?

c. Do other (NRC or other regulatory agency) regulatory actions (e.g., Orders, rules, generic letter, bulletins, 50.54(f) requests) influence licensee responses to this draft generic letter? If so what are they and do you have a suggested approach to reduce the cumulative effects in light of these other regulatory actions?

d. Are there other projects that licensees are undertaking, plan to undertake, or should be undertaking that provide greater safety benefit, that might be displaced or delayed as a result of the expenditure of effort and resources to respond to this generic letter?

e. Are there unintended consequences associated with responding to this generic letter at this time?

f. Please comment on the NRC's supporting justification for this generic letter.

## IV. Public Meeting

The NRC is requesting public comments on the draft generic letter. The NRC plans to hold a public meeting approximately 45 days into the comment period to discuss draft Generic Letter 2013 XX–XX: ''Treatment of Natural Phenomena Hazards In Fuel Cycle Facilities'' (ADAMS Accession No. ML13157A158), to engage industry stakeholders and members of the public in a discussion of this issue. This meeting is scheduled during the comment period to allow industry stakeholders and members of the public time to submit comments on the proposed generic communication before the comment period closes. All comments that are to receive consideration in the final generic letter must still be submitted electronically or in writing as indicated in the **ADDRESSES** section of this document.

Additional details regarding the meeting will be posted at least 10 days prior to the public meeting on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been cancelled or rescheduled, and the time allotted for public comments can be obtained from the Public Meeting Schedule Web site.

Dated at North Bethesda, Maryland, this 1st day of August 2014.

For the Nuclear Regulatory Commission.

**Marissa Bailey,**

*Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2014–18818 Filed 8–7–14; 8:45 am]

**BILLING CODE 7590–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72751; File No. SR–Phlx–2014–23]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, Related to the Priority Afforded to In-Crowd Participants Respecting Crossing, Facilitation, and Solicited Orders in Open Outcry Trading

August 4, 2014.

## I. Introduction

On April 23, 2014, NASDAQ OMX PHLX LLC (''Exchange'' or ''Phlx'') 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 revise the priority afforded to in-crowd participants respecting crossing, facilitation, and solicited orders in open outcry trading (''Proposal''). The proposed rule change was published for comment in the **Federal Register** on May 13, 2014.[3] On June 23, 2014, the Commission extended the time period in which to either approve the Proposal, disapprove the Proposal, or institute proceedings to determine whether to approve or disapprove the Proposal to August 11, 2014.[4] The Commission received two comment letters from one commenter regarding the Proposal [5] and one response letter from Phlx.[6] On July 30, 2014, the Exchange filed Amendment No. 1 to the Proposal.[7] The Commission is publishing this notice and order to solicit comments on the Proposal, as modified by Amendment No. 1, from interested persons and to institute proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the Proposal, as modified by Amendment No. 1.

## II. Description of the Proposal

The Exchange proposes to amend Phlx Rule 1014, Commentary .05(c)(ii), to afford priority in open outcry trading to in-crowd participants over out-of-crowd Streaming Quote Traders (''SQTs'') [9], Remote Specialists [10], and Remote Streaming Quote Traders (''RSQTs'' )[11] and over out-of-crowd

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72119 (May 7, 2014), 79 FR 27351 (''Notice'').

[4] *See* Securities Exchange Act Release No. 72447 (June 23, 2014), 79 FR 36569 (June 27, 2014).

[5] *See* Letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC, dated June 3, 2014 (''ISE Letter I''); Letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC, dated July 8, 2014 (''ISE Letter II'').

[6] *See* Letter from Carla Behnfeldt, Associate General Counsel, The NASDAQ OMX Group, Inc., dated June 20, 2014 (''Phlx Response Letter'').

[7] In Amendment No. 1, the Exchange clarifies a reference to a previous Phlx filing and an example. Amendment No. 1 has been placed in the public comment file for SR-Phlx-2014–23 at *http://www.sec.gov/comments/sr-phlx-2014-23/phlx201423.shtml* (*see* letter from Carla Behnfeldt, Associate General Counsel, The NASDAQ OMX Group, Inc., to Secretary, Commission, dated July 30, 2014) and also is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/phlx-filings/2014/SR-Phlx-2014-23_Amendment_1.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as a Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. Types of ROTs include SQTs, RSQTs and non-SQTs, which by definition are neither SQTs nor RSQTs. A Registered Options Trader is defined in Exchange Rule 1014(b)(i) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Phlx Rules 1014(b)(i) and (ii).

[10] A Remote Specialist is a qualified RSQT approved by the Exchange to function as a specialist in one or more options if the Exchange determines that it cannot allocate such options to a floor based specialist. A Remote Specialist has all the rights and obligations of a specialist, unless Exchange rules provide otherwise. *See* Phlx Rules 501 and 1020.

[11] A RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with a Remote Streaming Quote Trader Organization (''RSQTO'') with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist. An RSQTO is a member organization in good standing that satisfies the RSQTO readiness requirements in Phlx Rule 507(a)(i).

broker-dealer limit orders on the limit order book (but not over public customer orders) in crossing [12], facilitation [13], and solicited [14] orders, regardless of order size.

Currently, Commentary .05(c)(i) to Phlx Rule 1014 provides that, in the event that a Floor Broker [15] or specialist [16] presents a non-electronic order in which an RSQT is assigned or which is allocated to a Remote Specialist, and/or in which an SQT assigned in such option is not a crowd participant (collectively, ''Non-Crowd Participants''), such Non-Crowd Participant may not participate in trades stemming from such a non-electronic order unless the non-electronic order is executed at the price quoted by the Non-Crowd Participant at the time of execution. If the non-electronic order is executed at the price quoted by the Non-Crowd Participant, the Non-Crowd Participant may participate in the trade unless the order was a crossing, facilitation, or solicited order with a size of at least 500 contracts on each side.[17] If the order is a crossing, facilitation, or solicited order with a size of at least 500 contracts on each side, Commentary .05(c)(ii) gives priority to in-crowd participants (including, for purposes of Commentary .05(c)(ii) only, Floor Brokers) over Non-Crowd Participants and over out-of-crowd broker-dealer limit orders on the limit order book, but not over public customer orders.[18]

The Exchange proposes to eliminate the 500 contract minimum order size from Phlx Rule 1014, Commentary .05(c)(ii). As amended, the rule would afford priority to in-crowd participants over Non-Crowd Participants and out-of-crowd broker-dealer limit orders in crossing, facilitation, and solicited orders regardless of the size of those orders. The Exchange states that it initially permitted Non-Crowd Participants to participate in Floor Broker crosses to foster electronic options trading.[19] In 2006, the Exchange adopted the size requirement, which continued to permit Non-Crowd Participants to participate in smaller (under five hundred contracts) Floor Broker crosses.[20] According to the Exchange, electronic options trading is well-established and there is no longer a need for such special rules and incentives to develop electronic trading further.[21] The Exchange notes that another options exchange does not have the same differentiation of priority for orders of fewer than 500 contracts.[22] The Exchange believes that its Proposal will encourage order flow providers to send additional crossing, facilitation, and solicited orders to the Exchange without concern that the order may not be completely executed by the trading crowd.[23] The Exchange also believes that affording priority to in-crowd participants regardless of size will attract additional smaller cross orders to the Exchange and allow in-crowd market makers to compete for smaller orders.[24]

## III. Comment Letters and Phlx's Response

As noted above, the Commission received two comment letters from one commenter[25] and one response letter from Phlx.[26]

In its first letter, the commenter opposes the Proposal and requests that the Commission institute proceedings to disapprove the Proposal. The commenter argues that the Proposal unfairly denies electronic participants the ability to participate in the execution of open outcry orders along with in-crowd participants at the same price.[27] The commenter states its view that the Exchange has not provided sufficient justification for allocating smaller trades negotiated on its floor to counterparties in the trading crowd ahead of same-priced orders from electronic participants.[28] The commenter believes that the Proposal will encourage Phlx participants to bring more orders to the floor, where they may receive a higher trade allocation and may be able to internalize a trade, instead of executing those orders through electronic auction systems.[29] The commenter argues that, even with the current 500 contract minimum, Phlx's priority rules disadvantage orders being internalized to the benefit of the internalizing brokers, as these orders receive relatively little price competition.[30] The commenter suggests that giving priority to small orders on the floor will further skew participants' incentives to bring orders to the floor to achieve a frictionless ''clean cross'' and deprive customers of vigorous competition for these orders.[31] The commenter states that most electronic auctions require that orders be exposed to all other participants trading on the exchange, and orders that are not exposed, such as qualified contingent crosses, are required to be for a large size.[32]

The commenter also argues that, because no trade information is disseminated about orders executed on the floor to electronic participants, who may be willing to provide liquidity to orders executed on the Exchange floor, such orders will not benefit from potential price improvement built into electronic auctions.[33] The commenter believes that the Proposal will largely limit price competition for small orders to participants physically present in the crowd at the time a floor cross is

[12] A crossing order occurs when an options Floor Broker holds orders (except for floor qualified contingent cross orders, as defined in Exchange Rule 1064(e)) to buy and sell the same option series. Such a Floor Broker may cross such orders, provided that the trading crowd is given an opportunity to bid and offer for such option series in accordance with Exchange rules. *See* Phlx Rule 1064(a).

[13] A facilitation order occurs when an options Floor Broker holds an options order (except for floor qualified contingent cross orders, as defined in Exchange Rule 1064(e)) for a public customer and a contra-side order. Such a Floor Broker may execute such orders as a facilitation order, provided that such Floor Broker proceeds in accordance with Exchange rules concerning facilitation orders. *See* Phlx Rule 1064(b).

[14] A solicitation occurs whenever an order (except for floor qualified contingent cross orders, as defined in Exchange Rule 1064(e)), other than a cross, is presented for execution in the trading crowd resulting from an away-from-the-crowd expression of interests to trade by one broker dealer to another. *See* Phlx Rule 1064(c).

[15] A ''Floor Broker'' is an individual who is registered with the Exchange for the purpose, while on the Exchange's options floor, of accepting and handling options orders received from members and member organizations. *See* Phlx Rule 1060.

[16] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[17] This in-crowd priority applies only to crossing, facilitation, and solicited orders represented in open outcry, and does not apply to orders submitted electronically via the Exchange's electronic options trading platform, to which other priority rules apply. *See, e.g.,* Phlx Rules 1014(g)(vii) and (viii).

[18] According to the Exchange, public customer limit orders represented in the trading crowd and resting on the limit order book have, and will continue to have, priority over all other participants and accordingly must be executed up to the aggregate size of such orders before any in-crowd participant is entitled to priority. Public customer orders on the limit order book that are eligible for execution are required to be executed before a Floor Broker may execute its order in the crowd and/or with a contra-side order it holds. *See* Phlx Rule 1014, Commentary .05(c)(ii).

[19] *See* Amendment No. 1, *supra* note 7.

[20] *See* Notice, 79 FR at 27352. *See also* Amendment No. 1, *supra* note 7.

[21] *See* Notice, 79 FR at 27352. *See also* Amendment No. 1, *supra* note 7.

[22] *See* Notice, 79 FR at 27352–53. *See also* Chicago Board Options Exchange (''CBOE'') Rule 6.74, Crossing Orders.

[23] *See* Notice, 79 FR at 27353.

[24] *See* Notice, 79 FR at 27353–54.

[25] *See supra* note 5.

[26] *See supra* note 6.

[27] *See* ISE Letter I.

[28] *See* ISE Letter I.

[29] *See* ISE Letter I.

[30] *See* ISE Letter I at 1–2.

[31] *See* ISE Letter I at 2.

[32] *See* ISE Letter I at 2.

[33] *See* ISE Letter I at 2.

announced and transacted.[34] The commenter further argues that the Proposal would ignore electronic orders and quotes, especially for small orders, and cause more orders to be crossed at prices that have not been sufficiently vetted by the participants most likely to offer price improvement.[35]

In response to the commenter's concerns regarding in-crowd liquidity, Phlx states that on-floor liquidity on Phlx in many issues exceeds the displayed wider electronic markets.[36] Phlx argues that the Proposal merely removes the 500 contract minimum and that another options exchange does not have the same differentiation of priority for orders of fewer than 500 contracts.[37] Phlx believes that attracting smaller orders to the trading floor fosters an environment for on-floor liquidity providers to continue to provide price improvement and size improvement.[38] In response to the commenter's suggestion that the Proposal will facilitate internalization, Phlx states that priority will be afforded to all in-crowd participants, including market makers, not just floor brokers.[39] Phlx also believes that the Proposal should encourage small participants, such as floor-based market makers, to continue to make markets, which Phlx believes will improve the quality of execution for these smaller orders.[40]

In its second letter, the commenter replies to the Phlx Response Letter and reiterates its request that the Commission institute proceedings to disapprove the Proposal. In response to Phlx's statement that, based on Phlx's experience, on-floor liquidity on Phlx in many issues exceeds the displayed wider electronic markets,[41] the commenter requests that the Commission require Phlx to provide data that would allow the Commission to gauge the level of participation of floor-based market makers against orders represented in open outcry, and price improvement provided by these participants.[42] The commenter questions whether Phlx needs to afford priority to in-crowd liquidity providers if they are offering active price improvement.[43] The commenter states its view that to the extent that in-crowd participants provide price improvement to orders represented in open outcry, their orders are already entitled to priority over other orders at a worse price, including electronic quotes.[44] The commenter asserts that the Proposal is intended to allow in-crowd participants to internalize orders without being subject to competition from active liquidity providers in the electronic markets.[45] The commenter argues that Phlx's reliance on the CBOE rule is irrelevant as the Phlx Proposal must stand on its own, and, in any event, believes that the in-crowd priority rules of Phlx and CBOE are not in the public interest.[46] The commenter argues that the proposed expansion of these rules would only foster internalization and curtail price improvement.[47]

## IV. Proceedings To Determine Whether To Disapprove SR–Phlx–2014–23 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[48] to determine whether the proposed rule change should be approved or disapproved.[49] Institution of such proceedings is appropriate at this time in view of the legal and policy issues that are raised by the Proposal and are discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to comment on the Proposal, as modified by Amendment No. 1, and to provide the Commission with additional comment to inform the Commission's analysis whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act[50] requires that the rules of an exchange be designed, among other things, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, Section 6(b)(8) of the Act[51] requires that rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

As discussed above, the Proposal, as modified by Amendment No. 1, would afford priority to in-crowd participants over Non-Crowd Participants and out-of-crowd broker-dealer limit orders on the limit order book in crossing, facilitation, and solicited orders regardless of order size. The Exchange's current rule affords priority to in-crowd participants over Non-Crowd Participants and out-of-crowd broker-dealer limit orders on the limit order book in crossing, facilitation, and solicited orders with a size of at least 500 contracts on each side. As noted above, the commenter opposing the Proposal raises concerns, among other things, as to whether the Proposal unfairly denies electronic participants the ability to participate in the execution of open outcry orders along with in-crowd participants at the same price. The commenter further believes that the Proposal will encourage Phlx participants to send orders to the floor where the Phlx participant may receive a higher trade allocation and be able to internalize the trade—rather than executing the order in the electronic market where the customer order may be subject to more intense price competition. The commenter further stated its belief that insulating small order customers brought to the floor from competition by electronic participants may cause more orders to be crossed at prices that have not been sufficiently vetted by the participants most likely to offer price improvement.[52] This commenter believes that Phlx has provided insufficient justification for allocating smaller trades negotiated on its floor to counterparties in the trading crowd ahead of same-priced orders from electronic participants.[53]

[34] *See* ISE Letter I at 2.

[35] *See* ISE Letter I at 2. The commenter expressed its view that it is inappropriate to ignore electronic quotes, especially for smaller orders where substantial capital commitment or efforts to find liquidity are not necessary. *See id.*

[36] *See* Phlx Response Letter.

[37] *See* Phlx Response Letter (citing CBOE Rule 6.74, Crossing Orders).

[38] *See* Phlx Response Letter at 2.

[39] *See* Phlx Response Letter at 2.

[40] *See* Phlx Response Letter at 2.

[41] *See* Phlx Response Letter.

[42] *See* ISE Letter II.

[43] *See* ISE Letter II.

[44] *See* ISE Letter II at 1–2.

[45] *See* ISE Letter II at 2.

[46] *See* ISE Letter II at 2.

[47] *See* ISE Letter II at 2.

[48] 15 U.S.C. 78s(b)(2)(B).

[49] Section 19(b)(2)(B) of the Act 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. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

[50] 15 U.S.C. 78f(b)(5).

[51] 15 U.S.C. 78f(b)(8).

[52] *See* ISE Letter I. *See also* ISE Letter II.

[53] *See* ISE Letter I.

The Commission believes that questions are raised as to whether the Proposal, as modified by Amendment No. 1, is consistent with: (1) The requirements of Section 6(b)(5) of the Act, including whether the Exchange's proposed revisions to its rules regarding the order of priority in open outcry are 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and (2) the requirements of Section 6(b)(8) of the Act, including whether the Exchange's proposed revisions to its rules regarding the order or priority in open outcry impose any unnecessary or inappropriate burden on competition. The Commission believes that the issues raised by the Proposal can benefit from additional consideration and evaluation.

## V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the Proposal, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is inconsistent with Sections 6(b)(5) and 6(b)(8) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[54]

Interested persons are invited to submit written views, data, and arguments concerning Amendment No. 1 and regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by August 29, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 12, 2014. 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–2014–23 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2014–23 and should be submitted on or before August 29, 2014. If comments are received, any rebuttal comments should be submitted by September 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[54] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[55] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72754; File No. SR–ICEEU–2014–11]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Order Granting Accelerated Approval of Proposed Rule Change Relating to EMIR Requirements

August 4, 2014.

## I. Introduction

On July 7, 2014, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2014–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on July 15, 2014.[3] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change on an accelerated basis.

## II. Description of the Proposed Rule Change

ICE Clear Europe has stated that the principal purpose of the proposed rule change is to amend certain ICE Clear Europe procedural rules (''Procedures'') in order to comply with requirements under the European Market Infrastructure Regulation (including regulations and implementing technical standards thereunder, ''EMIR'')[4] that will apply to ICE Clear Europe as an authorized central counterparty and to further implement proposed changes to its Clearing Rules (the ''Clearing Rules'') relating to EMIR implementation and certain other matters as proposed in rule filing SR–ICEEU–2014–09 (the ''Rule Submission'').[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72582 (July 10, 2014), 79 FR 41320 (July 15, 2014) (SR–ICEEU–2014–11) (This rule filing is hereinafter referred to as the ''Procedures Submission'').

[4] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as well as various implementing regulations and technical standards.

[5] Securities Exchange Act Release No. 34–72540 (July 3, 2014), 79 FR 39429 (July 10, 2014) (SR–ICEEU–2014–09).

As described in more detail in the Rule Submission, in order to comply with EMIR, ICE Clear Europe is proposing changes to the structure of customer accounts for cleared transactions. The amendments to the Clearing Rules would establish two new types of individually segregated accounts, Individually Segregated Margin-flow Co-mingled Accounts and Individually Segregated Sponsored Accounts. The proposed changes to the Clearing Rules would also establish multiple new types of omnibus accounts, Segregated Customer Omnibus Accounts (separately for each product: FX, F&O and CDS) and Segregated TTFCA Customer Omnibus Accounts (separately for each product: FX, F&O and CDS) as well as Omnibus Margin-flow Co-mingled Accounts. The amendments to the Procedures described herein are intended to further implement these changes to the Clearing Rules, as well as make various other consolidating, conforming and clarifying changes and drafting improvements to the existing Procedures.

ICE Clear Europe proposes to make amendments to the following Procedures: The Clearing Procedures, Finance Procedures, Membership Procedures, Business Continuity Procedures, Complaint Resolution Procedures, General Contract Terms, CDS Procedures, FX Procedures, OTC FX Product Guide and Published Terms for FX Contracts, Auction Terms for FX Default Auctions, Auction Terms for F&O Default Auctions and Delivery Procedures. The CDS Operational Procedures are being eliminated as they are no longer applicable. The proposed Procedure amendments are described as follows.[6]

ICE Clear Europe proposes to make certain common changes to all relevant sections of the Procedures. In each such section of the Procedures, ICE Clear Europe would add provisions addressing governing law, arbitration and submission to jurisdiction that are substantially the same as those set forth in the Clearing Rules (specifically, Rules 117 and 1608). In addition, various references to Sponsored Principals would be added throughout, as well as conforming changes to reflect changes in defined terms in the Clearing Rules, such as the use of ''Buying Counterparty'' and ''Selling Counterparty''.

ICE Clear Europe proposes revisions to its Clearing Procedures to incorporate the additional categories of customer accounts and relevant defined terms and other clarifications for margin for the relevant product categories (F&O, CDS and FX). The proposed revisions also include conforming changes, implementing changes and drafting improvements related to the transfer and close out of customer positions. In addition, the revisions would addresses certain matters with respect to Customer-CM Collateral provided to Non-FCM/BD Clearing Members, establish certain recordkeeping requirements for Clearing Members with respect to Customers (including as to the identity and default portability preferences thereof), and adopt certain additional defined terms and procedures relating to position transfers made under Rule 408(a)(i) and Part 12 of the Clearing Rules, as well as paragraph 6 of the Clearing Procedures.

ICE Clear Europe proposes to revise the Finance Procedures to incorporate the new account categories (and in particular Sponsored Principals), accommodate the use of pledged collateral arrangements as well as title transfer collateral, make certain revisions concerning margin requirements for F&O and FX contracts, and make other conforming and clarifying changes. The Finance Procedures would also be revised to incorporate certain parameters for the FX guaranty fund and to allow the Clearing House to allow different currencies to be used for the guaranty fund contributions for any product category. In addition, Revised Paragraph 15 of the Finance Procedures would specify additional parameters for the Clearing House contributions to the three guaranty funds, as described in further detail in the Procedures Submission.

The Membership Procedures, which set out various aspects of the clearing membership application process, would be modified to also cover Sponsors and Sponsored Principals, in substantially the same manner as for Clearing Members. Other proposed revisions include various updates to defined terms and drafting clarifications as further described in the Procedures Submission.

ICE Clear Europe proposes to revise the CDS Procedures to implement the Sponsored Principal model and make various updates to defined terms (and conforming references to terms) and make drafting improvements for clarity and conformity, as discussed in more detail in the Procedures Submission. As noted in the Rule Submission, various membership requirements in Paragraph 2 have been moved to Part 2 of the Clearing Rules, and Paragraph 6, which addresses the Clearing House's contributions to the CDS guaranty fund, has been removed and moved to the Finance Procedures. Paragraph 13, which addresses certain aspects of customer transactions, including transfer of customer positions, has been moved to paragraph 6 of the Clearing Procedures (and generalized to apply all product categories, not just CDS).

Finally, ICE Clear Europe proposes to make clarifying, conforming and implementing changes to a number of other Procedures. Specifically, the FX Procedures would be revised to update various definitions, conform to new defined terms and other provisions of the updated Clearing Rules, incorporate the Sponsored Principal model, and make various other conforming and clarifying revisions as discussed in more detail in the Procedures Submission. The Auction Terms for F&O Default Auctions would be revised to incorporate participation by Sponsored Principals as well as a number of other conforming and clarifying revisions to the auction and bidding process as further described in the Procedures Submission. In addition, ICE Clear Europe proposes various amendments to the Delivery Procedures. In many cases these revisions do not strictly relate to EMIR implementation but reflect other general updates and conforming changes. ICE Clear Europe also proposes to make various non-substantive conforming changes and drafting clarifications to the Business Continuity Procedures and Complaint Resolution Procedures.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[7] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[8] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities

[6] The proposed rule change is described in further detail in the Procedures Submission. *See supra* note 3.

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

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.

The Commission finds that the proposed amendments to the Procedures are consistent with the requirements of Section 17A of the Act [9] and the rules and regulations thereunder applicable to ICE Clear Europe. In particular, the Commission believes that the proposed amendments to the ICE Clear Europe Procedures, which are principally designed to further implement proposed changes to its Clearing Rules as contained in the Rule Submission, are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and 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, consistent with Section 17A(b)(3)(F) of the Act.[10]

Section 19(b)(2)(C)(iii) of the Act [11] allows the Commission to approve a proposed rule change earlier than 30 days after the date of publication of the notice of the proposed rule change in the **Federal Register** where the Commission finds good cause for so doing and publishes the reason for the finding. In its filing, ICE Clear Europe requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. ICE Clear Europe has represented that the proposed Procedures changes are necessary to further implement the rule changes contained in the Rule Submission in order to comply with requirements under EMIR in connection with its authorization as a central counterparty under EMIR. ICE Clear Europe further notes that failure to have the amendments in effect, and to be in compliance with the EMIR requirements, may adversely affect the approval of its authorization application and therefore its ability to do business as a recognised central counterparty. Accordingly, the Commission finds that good cause exists to approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2)(C)(iii) of the Act.[12]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [13] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ICEEU–2014–11) be, and hereby is, approved on an accelerated basis.[15]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18750 Filed 8–7–14; 8:45 am]

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[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78s(b)(2)(C)(iii).

[12] 15 U.S.C. 78s(b)(2)(C)(iii).

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72756; File No. SR–ICEEU–2014–10]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Order Granting Accelerated Approval of Proposed Rule Change to CDS Policies Relating to EMIR

August 4, 2014.

## I. Introduction

On June 30, 2014, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2014–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on July 10, 2014.[3] The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is granting approval of the proposed rule change on an accelerated basis.

## II. Description of the Proposed Rule Change

ICE Clear Europe is proposing this change to amend certain of the ICE Clear Europe credit default swaps (''CDS'') risk policies (''Risk Policy Amendments'') in order to facilitate compliance with requirements under the European Market Infrastructure Regulation (including regulations thereunder, ''EMIR'') [4] that will apply to ICE Clear Europe as an authorized central counterparty.

ICE Clear Europe states that the relevant policies being modified by the proposed change are (i) the CDS Risk Policy (''Risk Policy''); (ii) the Risk Model Description (''Model Description''); (iii) the CDS Clearing Back-Testing Framework (''Back-Testing Framework''); (iv) the CDS Clearing Stress-Testing Framework (''Stress-Testing Framework''); and (v) the CDS Default Management Framework (''Default Management Framework'').

ICE Clear Europe states that the changes to the Risk Policy amend the calculation of CDS initial margin requirements to comply with margin requirements under EMIR Article 41 and Article 24 of the implementing Regulatory Technical Standards.[5] ICE Clear Europe contends that, as revised, the initial margin methodology is designed to provide portfolio risk coverage against at least 5-day market realizations that would occur with probability 99.5% (previously 99.0%), that is, the estimated requirements provide risk protection equivalent to at least a 5-day 99.5% Value-at-Risk measure. In addition, ICE Clear Europe states that in order to address requirements under EMIR related to procyclicality (Article 28 of the Regulatory Technical Standards) changes were made to the maximum scale used for the initial margin approach by adding a volatility scale that assigns a 25% weight to stressed period observations during the lookback period from April 2007 to the present (consistent with Article 28(b) of the Regulatory Technical Standards). ICE Clear Europe expects the revised initial margin requirement, including certain portfolio benefit assumptions, to result in more conservative initial margin requirements than under the previous approach.

ICE Clear Europe states that similar amendments to those described above are also made to the Model Description. ICE Clear Europe contends that under the revised Model Description, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72544 (July 3, 2014), 79 FR 39421 (July 10, 2014) (SR–ICEEU–2014–10).

[4] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

[5] Commission Delegated Regulation (EU) No. 153/2013 of 19 December 2012 Supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to Regulatory Technical Standards on Requirements for Central Counterparties (the ''Regulatory Technical Standards'').

overall initial margin methodology, post portfolio benefits and other risk components (e.g. jump-to-default and wrong way risk), will provide portfolio risk coverage against at least 5-day market realizations that would occur with probability 99.5% or higher. ICE Clear Europe states that conforming changes with respect to the 99.5% confidence interval are also made in the Model Description. ICE Clear Europe also states that the revised Model Description reflects the use of stressed observations described above to limit procyclicality. Furthermore, ICE Clear Europe states that the Model Description has also been revised to include the Clearing House's Monte Carlo Approach for Risk Management (''MC''), which has previously been applied to Western European sovereign CDS and is proposed to be extended to all CDS.

ICE Clear Europe states that the CDS MC approach aims to model the spread risk component of initial margin by combining individual risk factors (''RFs''), i.e., single name or index family of instruments, into a copula. ICE Clear Europe further states that marginal distributions for individual RFs are joined together under a Student-t copula. In this way, ICE Clear Europe contends, the model preserves historical behavior of RFs and their dependencies and that the value-at risk (VaR) for the profit and loss distribution can be estimated by sampling from this copula.

ICE Clear Europe contends that the MC method offers a number of advantages over the existing scenario-based spread response method (the ''Decomp SR''), in that (1) the dependence structure of RFs is encoded into the copula, as opposed to the long-short offsets algorithm used to determine portfolio benefits under the Decomp SR; and (2) the copula can also capture tail dependence, such that various extreme scenarios can be easily simulated.

ICE Clear Europe states that the scenario-based approach of the spread risk component with its portfolio benefit assumptions is generally expected to result in a more conservative requirement when compared to the MC VaR approach for the same coverage level. ICE Clear Europe further states that in order to ensure compliance with the 99.5% confidence interval requirement for OTC derivatives under EMIR, the final spread response charge will be determined as the more conservative of the Decomp SR and the MC VaR calculated at a 99.5% confidence interval.

ICE Clear Europe also states that the CDS pricing model, used since the inception of clearing, has also been attached to the Risk Model Description as an annex.

ICE Clear Europe states that the changes to the Back-Testing Framework are also meant to implement the 99.5% confidence interval. ICE Clear Europe states that the historical volatility calculation has changed in the Back-Testing Framework to use data from, at minimum, the most recent year (or, if shorter, the period in which the relevant contract has been cleared). In addition, ICE Clear Europe contends that, per the amendments, on at least a monthly basis, the CDS Risk Department will report the CDS back testing results and analysis to the CDS Risk Committee in order to seek their review and, if needed, their recommendations of the CDS margin model. ICE Clear Europe also states that CDS back testing results and analyses are made available to all CDS Clearing Members and clients (where known to ICE Clear Europe) for their own portfolios and that disclosed information is aggregated in a form that does not breach confidentiality. ICE Clear Europe also contends that the policy also provides a framework for monitoring and remediating breaches that arise during back-testing, based on the so-called ''Basel Traffic Light System,'' depending on the number and magnitude of the exceedances. Finally, ICE Clear Europe states that the Back-Testing Framework will be reviewed and approved by the CDS Risk Committee and ICE Clear Europe Board at least annually.

ICE Clear Europe states the Stress-Testing Framework is amended to provide further detail as to its use of daily stress testing, which allows ICE Clear Europe to discover any potential weaknesses in the risk methodologies as well as to exercise short-term measures if the tests reveal that any counterparties are inadequately collateralized. ICE Clear Europe contends that a detailed analysis of the stress testing and sensitivity testing results is to be performed by the CDS Risk Department at least on a monthly basis, or more frequently in stressed market conditions, to ensure the adequacy of the existing stress test scenarios and framework. ICE Clear Europe states the Stress-Testing Framework amendments would also add pure historical scenarios, as required under EMIR, that are applied at the single name level, using the same date across all instruments. ICE Clear Europe also states that single-name specific stress scenarios are based on the same 5-day period when the on-the-run indices had the greatest observed related spread increases or decreases. ICE Clear Europe also states that the guaranty fund stress scenario has also been clarified, and is designed to account for: (1) The occurrence of credit events for two Clearing Members and three reference entities on which the defaulted Clearing Members sold protection, (2) adverse contracting or widening credit spread scenarios, (3) adverse widening of Index-single name ''basis,'' and (4) adverse changes of the default-free discount terms structure. ICE Clear Europe contends that CDS stress testing results and analyses are made available to all CDS Clearing Members and clients (where known to ICE Clear Europe) for their own portfolios and disclosed information is aggregated in a form that does not breach confidentiality. Finally, ICE Clear Europe states the CDS Stress Testing framework is to be reviewed and approved by the CDS Risk Committee and ICE Clear Europe Board at least annually.

ICE Clear Europe contends that minor improvements have been made to the Default Management Framework, namely, (1) ICE Clear Europe will conduct a quarterly (rather than annual) review of its Default Management Framework, and (2) ICE Clear Europe will perform a mock Clearing Member default test at least annually.

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [6] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [7] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative 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. In addition, Rule 17Ad–22(b)(1)–(3) requires a registered clearing agency that performs central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, measure its credit exposures to its participants at least once a day and

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

limit its exposures to potential losses from defaults by its participants, use margin requirements to limit its credit exposures to participants under normal market conditions, and if it performs central counterparty services for security-based swaps, maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions.[8]

The Commission finds that the proposed rule change is consistent with Section 17A of the Act[9] and the rules thereunder applicable to ICE Clear Europe. ICE Clear Europe represents that the proposed rule change will enhance the financial resources available to the Clearing House by imposing more conservative initial margin requirements, while also reducing the risk of loss to market participants resulting from a default by a Clearing Member or other customer. ICE Clear Europe further states that the proposed rule change will impose more frequent reviews and tests of its risk management procedures. The Commission therefore believes that the proposed enhancements to ICE Clear Europe's risk policies are designed 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 consistent with Section 17A(b)(3)(F).[10] In addition, the Commission believes the proposed Risk Policy Amendments are reasonably designed to ensure that ICE Clear Europe continues to meet the risk management requirements of Rule 17Ad–22(b)(1)–(3).[11]

Section 19(b)(2)(C)(iii) of the Act[12] allows the Commission to approve a proposed rule change earlier than 30 days after the date of publication of the notice of the proposed rule change in the **Federal Register** where the Commission finds good cause for so doing and publishes the reason for the finding. In its filing, ICE Clear Europe requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. ICE Clear Europe has represented that the proposed Risk Policy Amendments are necessary in order to comply with requirements under EMIR in connection with its authorization as a central counterparty under EMIR. ICE Clear Europe further notes that failure to have the amendments in effect, and to be in compliance with the EMIR requirements, may adversely affect the approval of its authorization application and therefore its ability to do business as a recognized central counterparty. Accordingly, the Commission finds that good cause exists to approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2)(C)(iii) of the Act.[13]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[14] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–ICEEU–2014–10) be, and hereby is, approved on an accelerated basis.[16]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18752 Filed 8–7–14; 8:45 am]

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[8] 17 CFR 240.17Ad–22(b)(1)–(3).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(b)(1)–(3).

[12] 15 U.S.C. 78s(b)(2)(C)(iii).

[13] 15 U.S.C. 78s(b)(2)(C)(iii).

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72755; File No. SR–ICEEU–2014–09]**

## Self-Regulatory Organizations; ICE Clear Europe Limited; Order Granting Accelerated Approval of Proposed Rule Change Relating to EMIR Requirements

August 4, 2014.

## I. Introduction

On June 30, 2014, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2014–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on July 10, 2014.[3] The Commission did not receive any comments on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change on an accelerated basis.

## II. Description of the Proposed Rule Change

The principal purpose of the proposed change is to amend the ICE Clear Europe Clearing Rules in order to comply with requirements under the European Market Infrastructure Regulation (including regulations and implementing technical standards thereunder, ''EMIR'')[4] that will apply to ICE Clear Europe as an authorized central counterparty,[5] and to make certain other amendments to harmonize its rules across different products and make improvements to its rules.

ICE Clear Europe states that the principal change will be to implement changes to the structure of customer accounts for cleared transactions to enhance segregation options for customers of Clearing Members. According to ICE Clear Europe, pursuant to EMIR,[6] ICE Clear Europe will be required to keep separate records and accounts that will enable it to distinguish the assets and positions of: (i) One Clearing Member from those of any other Clearing Member, and (ii) either (A) a Clearing Member from those of its clients (''omnibus segregation'') or (B) a client of a Clearing Member from any other client of that Clearing Member (''individual segregation''). In addition, each of ICE Clear Europe's Clearing Members will be required (i) to keep separate records and accounts that enable them to distinguish in both accounts held with the Clearing House and their own accounts Clearing Member assets and positions from those of its clients; and (ii) to offer clients a choice of individual or omnibus segregation at the Clearing House. ICE Clear Europe has proposed revisions to its segregation models to implement this requirement to provide both individual

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72540 (July 3, 2014), 79 FR 39429 (July 10, 2014) (SR–ICEEU–2014–09).

[4] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as well as various implementing regulations and technical standards.

[5] ICE Clear Europe has separately filed certain related changes to its policies and procedures, including risk management policies. *See* Securities Exchange Act Release No. 34–72544 (July 3, 2014), 79 FR 39421 (July 10, 2014) (SR–ICEEU–2014–10) and Securities Exchange Act Release No. 34–72582 (July 10, 2014), 79 FR 41320 (July 15, 2014) (SR–ICEEU–2014–11).

[6] EMIR Article 39(1)–(3).

segregation and omnibus segregation options.

The proposed rule change will establish two new types of individually segregated accounts for Clearing Members that are not registered as a futures commission merchant with the Commodity Futures Trading Commission (''CFTC'') and/or as a broker-dealer with the Commission (''Non-FCM/BD Clearing Members''): Individually Segregated Margin-flow Co-mingled Accounts and Individually Segregated Sponsored Accounts. With respect to an Individually Segregated Sponsored Account, ICE Clear Europe proposes the concept of treating a customer as a Sponsored Principal, capable of entering into contracts with ICE Clear Europe directly, with a Clearing Member serving as Sponsor to be jointly and severally liable with the Sponsored Principal for the Sponsored Principal's obligations to ICE Clear Europe. ICE Clear Europe has proposed extensive revisions to its Clearing Rules designed to implement the Sponsored Principal model.

The proposed rule change will also establish multiple new types of omnibus accounts: Segregated Customer Omnibus Accounts (separately for each product: FX, F&O and CDS) and Segregated TTFCA Customer Omnibus Accounts (separately for each product: FX, F&O and CDS), as well as Omnibus Margin-flow Co-mingled Accounts.

ICE Clear Europe proposes making these new individually segregated and omnibus accounts available only to Non-FCM/BD Clearing Members and their customers. For Clearing Members registered as a futures commission merchant with the CFTC and/or as a broker-dealer with the Commission, as applicable (''FCM/BD Clearing Members'') and their customers, ICE Clear Europe proposes that it will not offer individual client segregation at this time, and the existing account types and segregation requirements for client assets (which are required under applicable law) would be maintained.[7]

ICE Clear Europe further proposes changes relating to the parameters for determining the relevant guaranty funds for the F&O, CDS and FX businesses to meet the requirements under EMIR.[8] ICE Clear Europe states that the proposed changes do not affect the Clearing House's obligation to comply with other financial resources requirements under applicable laws, including the Act and Commission rules. Accordingly, ICE Clear Europe states that the parameters for determining the guaranty funds will also take into account such other requirements under applicable laws. Additionally, pursuant to EMIR,[9] ICE Clear Europe proposes to revise rules to address the use of guaranty fund contributions to support borrowings under liquidity facilities for the purpose of making payments on cleared contracts, subject to certain limitations for each product category.

Pursuant to EMIR,[10] ICE Clear Europe also proposes changes relating to porting customer positions and margin, changes relating to direct payments to customers following a Clearing Member's default, and changes relating to default management in the event of a customer's breach or default. These changes include the requirement for the Clearing House to transfer customer positions and margin after a Clearing Member's default, subject to certain conditions (including transfer being subject to applicable insolvency laws); the requirement that any transfer of customer positions and margin be fair to clients and indirect clients of the defaulting Clearing Member; the provision that would authorize ICE Clear Europe, upon a Clearing Member's default, to make any net sum payment relating to a customer directly to that customer, if known; and the provision that would permit ICE Clear Europe, at the request of a Clearing Member, to transfer positions in a customer account to the Clearing Member's proprietary account to facilitate the Clearing Member's management of a breach of that customer, or default of that customer, under a Customer-Clearing Member Agreement.

In addition, ICE Clear Europe proposes changes relating to membership criteria, including requirements as to operational and financial capacity, compliance with sanctions regimes, and having a well-founded legal framework to support clearing operations. The proposed rule change also imposes a requirement that additional conditions imposed on Clearing Membership be proportional to the risk brought by the applicant and additional requirements around rejection or denial of applications. ICE Clear Europe also proposes changes that contain additional obligations on Clearing Members that are driven by EMIR requirements.

ICE Clear Europe further proposes changes to implement EMIR requirements related to trade repository reporting.[11] These include a rule change that requires a Clearing Member be a user of a designated repository for purposes of swap data reporting; a rule change to require that each Clearing Member, Sponsored Principal, customer and the Clearing House, as applicable, shall ensure reporting of cleared contracts and any modification or termination thereof to a trade repository within one working day following the conclusion, modification or termination of the contracts; and a rule change to authorize ICE Clear Europe to submit reporting data to reflect any transfer on behalf of a defaulting Clearing Member and its customers as a result of porting customer positions and collateral.

Finally, ICE Clear Europe also proposes certain other changes to its Clearing Rules that implement the foregoing, update various definitions, conform to new defined terms and other provisions of the updated Clearing Rules, incorporate the Sponsored Principal model and other new account structures, and make various other conforming and clarifying revisions that constitute drafting improvements, as more fully described in its filing with the Commission.[12]

## III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[13] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[14] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions

[7] ICE Clear Europe has confirmed in the filing that the Bank of England has advised ICE Clear Europe that the requirement under EMIR for the Clearing House to offer an individual segregation model to Clearing Members (and in turn for Clearing Members to offer individual segregation to their customers) may be satisfied, in the case of an FCM/BD Clearing Member, if the Clearing Member introduces such customers to another Clearing Member (including an affiliate) that can offer an individually segregated account, to the extent permitted by applicable law. ICE Clear Europe is not at this time offering its Sponsored Principal model to U.S. Clearing Members or potential U.S. Sponsored Principals, and therefore provisions regarding U.S. Sponsored Principals (e.g., Rule 1905) and other references in the Clearing Rules to U.S. Sponsored Principals will not apply at this time. ICE Clear Europe confirmed in its rule filing that it will submit another rule filing if it determines to offer the Sponsored Principal model to U.S. Clearing Members or U.S. Sponsored Principals.

[8] EMIR Article 42(3).

[9] Articles 44–45 of Commission Delegated Regulation (EU) 153/2013 of 19 December 2012.

[10] EMIR Article 48(5) and (6).

[11] EMIR Article 9.

[12] *See supra* note 3.

[13] 15 U.S.C. 78s(b)(2)(C).

[14] 15 U.S.C. 78q–1(b)(3)(F).

and, to the extent applicable, derivative 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, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and in general, to protect investors and the public interest, and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to ICE Clear Europe. With respect to the proposed rule change intended to implement the new individual and omnibus segregation accounts, ICEEU contends that these changes provide strengthened options for the segregation and safeguarding of customer funds to customers of Non-FCM/BD Clearing Members. The existing, non-individually segregated models will also generally remain available for those customers that want them. In addition, the customer account structures and segregation requirements for FCM/BD Clearing Members are not being changed. Accordingly, ICEEU states that the proposed rule changes will enhance, and not reduce, the level of customer protection available under the current ICE Clear Europe rules. The Commission finds that the proposed rule changes implementing the new individual and omnibus segregation accounts reduce the risk of loss to the Clearing House and market participants associated with a default by a Clearing Member or its customer and therefore, contribute to the safeguarding of securities and funds associated with derivative transactions that are in the custody or control of the Clearing House or for which it is responsible, consistent with Section 17(A)(b)(3)(F) of the Act.[15]

With respect to the proposed rule change regarding guaranty fund, ICEEU contends that the proposed changes do not themselves change ICE Clear Europe's methodology with respect to its margin or guaranty fund requirements. ICE Clear Europe currently implements risk management methodology that takes into account the parameters required to comply with all applicable laws and intends to continue maintaining risk management methodology with respect to margin and the guaranty fund that will comply with all applicable laws. Therefore, the Commission finds that the proposed rule change will not adversely affect ICE Clear Europe's maintenance of financial resources that support its clearing operations and is consistent with the requirement of safeguarding securities and funds in the custody or control of the clearing agency,[16] and the requirements of Rule 17Ad–22(b)(3)[17] regarding the maintenance of sufficient financial resources.

With respect to customer portability, direct payment to customers, and the option for a Clearing Member to request that ICE Clear Europe transfer a customer's positions and margin to the Clearing Member's proprietary account, the Commission finds that the proposed rule change enhances ICE Clear Europe's ability to manage defaults and is consistent with the Act, and rules and regulations thereunder applicable to ICE Clear Europe, in particular the requirement of safeguarding securities and funds in the custody or control of the clearing agency and the requirement that a clearing agency establishes default procedures that ensure timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[18]

Further, the Commission finds the proposed changes relating to membership criteria and obligations improves the financial and operational requirements for Clearing Membership and clarifies the Clearing House's ability to impose additional conditions on Clearing Membership and to reject or deny Clearing Membership applications, which is consistent with the Act, in particular the requirements that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement, to foster cooperation and coordination with persons engaged in the clearance and settlement, and not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[19]

With respect to the proposed rule change to implement the reporting requirements under EMIR, the Commission finds that the proposed rule change only requires ICE Clear Europe or its counterparties to ensure that contract data are reported and leaves flexibility for ICE Clear Europe and its counterparties to determine who would be the reporting party undertaking the reporting obligations. The Commission finds that the proposed rule change is consistent with the Act, in particular the requirement that the rules of a clearing agency are designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement, and to protect investors and the public interest.[20]

Finally, the Commission finds that the other proposed changes to ICE Clear Europe's Clearing Rules are consistent with Section 17A of the Act, and rules and regulations thereunder applicable to ICE Clear Europe. In particular, the Commission believes that these proposed changes are principally designed to further implement the other changes to the Clearing Rules described above that are consistent with the Act by updating various definitions, conforming to new defined terms and other provisions of the updated Clearing Rules, and making various other conforming and clarifying revisions that constitute drafting improvements, and therefore are designed to promote prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and 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, consistent with Section 17A(b)(3)(F) of the Act.[21]

Section 19(b)(2)(C)(iii) of the Act[22] allows the Commission to approve a proposed rule change earlier than 30 days after the date of publication of the notice of the proposed rule change in the **Federal Register** where the Commission finds good cause for so doing and publishes the reason for the finding. In its filing, ICE Clear Europe requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. ICE Clear Europe has represented that the proposed changes to its Clearing Rules are necessary to comply with requirements under EMIR in connection with its authorization as a central counterparty under EMIR. ICE Clear Europe further notes that failure to have the amendments in effect, and to be in compliance with the EMIR requirements, may adversely affect the approval of its authorization application and therefore its ability to do business as a recognized central counterparty. Accordingly, the Commission finds that good cause exists to approve the proposed rule change on an accelerated

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 17 CFR 240.17Ad–22(b)(3).

[18] 15 U.S.C. 78q–1(b)(3)(F) and 17 CFR 240.17Ad–22(d)(11).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 15 U.S.C. 78s(b)(2)(C)(iii).

basis pursuant to Section 19(b)(2)(C)(iii) of the Act.[23]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[24] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–ICEEU–2014–09) be, and hereby is, approved on an accelerated basis.[26]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18751 Filed 8–7–14; 8:45 am]

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[23] 15 U.S.C. 78s(b)(2)(C)(iii).

[24] 15 U.S.C. 78q–1.

[25] 15 U.S.C. 78s(b)(2).

[26] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72748; File No. SR–NYSEArca–2014–46]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Shares of the Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF Under NYSE Arca Equities Rule 8.600

August 4, 2014.

## I. Introduction

On April 16, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF (each a ''Fund,'' and collectively ''Funds'') under NYSE Arca Equities Rule 8.600. On May 1, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change was published for comment in the **Federal Register** on May 6, 2014.[3] On June 18, 2014, the Commission designated a longer period for Commission action on the proposed rule change.[4] On July 28, 2014, the Exchange filed Amendment No. 2 to the proposed rule change,[5] which amended and replaced the proposed rule change in its entirety. The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72064 (May 1, 2014), 79 FR 25908 (''Notice'').

[4] *See* Securities Exchange Act Release No. 72422, 79 FR 25908 (June 24, 2014).

[5] In Amendment No. 2, the Exchange: (1) Noted the replacement of Fidelity Management & Research Company with Fidelity Investments Money Management, Inc. as the Funds' manager (''Manager''); (2) stated that the Manager will have overall responsibility for directing each Fund's investments and handling each Fund's business affairs; (3) disclosed that FMR Co., Inc. (''FMRC'') is affiliated with the Manager; (4) disclosed that other investment advisors are affiliated with the Manager; (5) specified that only senior loans would be included in the definition of ''Debt Securities,'' one of the primary investments of the Funds; (6) designated structured securities, junior loans, and other securities believed to have debt-like characteristics, including hybrid securities, as non-primary investments; (7) specified that the Funds' junior loans, structured securities, and hybrid securities would be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service; (8) stated that the Funds' derivative investments also may overlie hybrid securities; (9) specified that, in computing each Fund's net asset value (''NAV''), junior loans, structured securities, and hybrid securities would be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service; (10) expanded the information to disclosed daily about the portfolio of each Fund on the Funds' Web site to include: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio; and (11) stated that quotation information for OTC-traded derivative instruments may be obtained from brokers and dealers who make markets in such instruments or through nationally recognized pricing services through subscription agreements.

## II. Description of the Proposed Rule Change

### *A. In General*

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Funds are offered by Fidelity Merrimack Street Trust (''Trust''), a Massachusetts business trust.[6] Fidelity Investments Money Management, Inc. will be the Funds' manager and will have overall responsibility for directing each Fund's investments and handling each Fund's business affairs.[7] FMRC, which is affiliated with the Manager, will serve as a sub-adviser for the Fidelity Total Bond ETF, and other investment advisers will serve as sub-advisers for the Funds (together with FMRC, ''Sub-Advisers'').[8] Other investment advisers, which also are affiliates of the Manager, will assist the Manager with foreign investments; these investment advisers include Fidelity Management & Research (U.K.) Inc., Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Inc. Fidelity Distributors Corporation (''FDC'') will be the distributor for the Shares.[9] Fidelity Distributors Corporation (''FDC'') will be the distributor for the Funds' Shares.[10]

The Exchange represents that the Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers, and that each (1) has implemented a fire wall with respect to affiliated broker-dealers regarding access to information concerning the composition of or changes to the portfolios, and (2) will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolios.[11]

[6] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). On April 17, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Funds (File Nos. 333–186372 and 811–22796) (the ''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30513 (May 10, 2013) (''Exemptive Order'') (File No. 812–14104).

[7] *See* Amendment No. 2, *supra* note 5.

[8] *See id.*

[9] *See id.*

[10] *See id.*

[11] *See* Commentary .06 to Rule 8.600. In the event (a) the Manager or any of the Sub-Advisers becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the

*B. The Exchange's Description of the Funds*

The Exchange has made the following representations concerning the Fund.

Fidelity Investment Grade Bond ETF

The Exchange states that the Fidelity Investment Grade Bond ETF would seek a high level of current income. The Manager would use the Barclays U.S. Aggregate Bond Index (''Aggregate Index'') as a guide in structuring the Fund and selecting its investments. The Manager would manage the Fund to have similar overall interest rate risk to the Aggregate Index.

Normally,[12] the Manager would invest at least 80% of the Fund's assets in investment-grade debt securities (those of medium and high quality).[13] The debt securities in which the Fund may invest are: Corporate debt securities; U.S. Government securities; repurchase agreements and reverse repurchase agreements;[14] money market securities; mortgage and other asset-backed securities;[15] senior loans; loan participations and loan assignments and other evidences of indebtedness, including letters of credit, revolving credit facilities, and other standby financing commitments; stripped securities; municipal securities; sovereign debt obligations; and obligations of international agencies or supranational entities (collectively, ''Debt Securities'').[16]

The Fund may hold uninvested cash or may invest it in cash equivalents such as: Repurchase agreements; shares of investment companies, including exchange traded funds registered under the 1940 Act that primarily hold short-term bonds; or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).[17] The Manager may invest the Fund's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.[18]

Fidelity Limited Term Bond ETF

The Fidelity Limited Term Bond ETF would seek to provide a high rate of income. The Manager would use the Fidelity Limited Term Composite Index (''Composite Index'') as a guide in structuring the Fund and selecting its investments. The Manager would manage the Fund to have similar overall interest rate risk to the Composite Index.

Normally, the Manager would invest at least 80% of the Fund's assets in investment-grade Debt Securities (those of medium and high quality). The Manager may invest the Fund's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers. Additionally, the Fund may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short-term bond ETFs or mutual funds, or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).

Fidelity Total Bond ETF

According to the Registration Statement, Fidelity Total Bond ETF would seek a high level of current income. The Manager would use the Barclays U.S. Universal Bond Index (''Universal Index'') as a guide in structuring the Fund and selecting its investments. The Manager would use the Universal Index as a guide in allocating the Fund's assets across the investment-grade, high yield, and emerging market asset classes (as discussed below). The Manager would manage the Fund to have similar overall interest rate risk to the Universal Index.

Normally, the Manager would invest at least 80% of the Fund's assets in Debt Securities. The Manager would allocate the Fund's assets across investment-grade, high yield, and emerging market Debt Securities. The Manager may invest up to 20% of the Fund's assets in lower-quality Debt Securities.[19] The Manager may invest the Fund's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.[20]

According to the Registration Statement, the Fund may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short-term bond ETFs or mutual funds, or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).

According to the Registration Statement, the Manager would allocate the Fund's assets among different asset classes, using the composition of the Universal Index as a guide, and among different market sectors (for example, corporate, asset-backed, or government securities) and different maturities based on its view of the relative value of each sector or maturity.

Other Investments

As described above, although the Manager would normally invest at least 80% of assets of the Fidelity Investment Grade Bond ETF and Fidelity Limited Term Bond ETF in investment-grade Debt Securities and would normally invest at least 80% of assets of the Fidelity Total Bond ETF in Debt Securities, the Manager may invest up to 20% of a Fund's assets in other

Manager or Sub-Adviser will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. *See* Notice, *supra* note 3, 79 FR at 25909.

[12] The term ''normally'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. According to the Registration Statement, each Fund reserves the right to invest without limitation in investment-grade money market or short-term debt instruments for temporary, defensive purposes.

[13] Investment-grade debt securities include all types of debt instruments that are of medium and high-quality. An investment-grade rating means the security or issuer is rated investment-grade by a credit rating agency registered as a nationally recognized statistical rating organization with the Commission (for example, Moody's Investors Service, Inc.), or is unrated but considered to be of equivalent quality by the relevant Fund's Manager or Sub-Adviser.

[14] Investment-grade debt securities include repurchase agreements collateralized by U.S. Government securities as well as repurchase agreements collateralized by equity securities, non-investment-grade debt, and all other instruments in which a Fund can perfect a security interest, provided that the repurchase agreement counterparty has an investment-grade rating.

[15] Each Fund may invest up to 20% of its total assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation will not apply to U.S. Government securities.

[16] *See* Amendment No. 2, *supra* note 5. Debt Securities may be fixed, variable, or floating rate securities. Variable rate securities provide for a specific periodic adjustment in the interest rate, while floating rate securities have interest rates that change whenever there is a change in a designated benchmark rate or the issuer's credit quality, sometimes subject to a cap or floor on the interest rate. Some variable or floating rate securities are structured with put features that permit holders to demand payment of the unpaid principal balance plus accrued interest from the issuers or certain financial intermediaries. In addition, Debt Securities may include zero coupon bonds. Investments in Debt Securities may have a leveraging effect on a Fund.

[17] The Exchange states that currently it is expected that the Funds will only invest in Fidelity central funds that are money market funds. *See* Notice, *supra* note 3, 79 FR at 25910, n.22.

[18] The Exchange states that the Fund's holdings generally are expected to be U.S. dollar denominated. *See id.* at 25910, n.23.

[19] Lower-quality debt securities, also referred to as high yield debt securities, are those of less than investment-grade quality.

[20] The Fund's holdings may be U.S. dollar denominated and non-dollar denominated.

securities and financial instruments, as summarized below.

According to the Registration Statement, the Funds may invest in securities of other investment companies (other than the short-term bond investment companies described above). In addition, the Funds may invest in other exchange-traded products (''ETPs'')—other than the short-term bond ETFs described above—such as commodity pools, or in other entities that are traded on an exchange.

According to the Registration Statement, the Funds may invest in inverse ETFs (also called ''short ETFs'' or ''bear ETFs''), shares of which are expected to increase in value as the value of the underlying benchmark decreases.

According to the Registration Statement, the Funds also may invest in leveraged and inverse leveraged ETFs, which seek to deliver multiples or inverse multiples of the performance of an index or other benchmark they track and which use derivatives in an effort to amplify the returns of the underlying index or benchmark.

According to the Registration Statement, the Funds may invest in exchange traded notes (''ETNs''), which are a type of senior, unsecured, unsubordinated debt security issued by financial institutions and which combine aspects of both bonds and ETFs. The Funds may invest in leveraged ETNs.

According to the Registration Statement, the Funds may invest in American Depositary Receipts (''ADRs'') as well as other ''hybrid'' forms of ADRs, including European Depositary Receipts (''EDRs'') and Global Depositary Receipts (''GDRs''), which are certificates evidencing ownership of shares of a foreign issuer.[21]

The Funds may invest in: junior loans, by buying an assignment of all or a portion of the junior loan from a lender or by purchasing a loan participation from a lender or other purchaser of a participation; structured securities;[22] and other securities believed to have debt-like characteristics, including hybrid securities,[23] which may offer characteristics similar to those of a bond security (such as stated maturity and preference over equity in bankruptcy).[24]

In addition to the investment-grade Debt Securities described above, Fidelity Investment Grade Bond ETF and Fidelity Limited Term Bond ETF may invest in lower-quality Debt Securities. The Manager may invest up to 10% of the Fidelity Investment Grade Bond ETF's assets in lower-quality Debt Securities. Lower-quality Debt Securities include all types of debt instruments that have poor protection with respect to the payment of interest and repayment of principal, or may be in default.

In addition to the investment grade repurchase agreements described above, Investment Grade Bond ETF and Limited Term Bond ETF may invest in repurchase agreements with repurchase agreement counterparties that do not have an investment-grade rating, if those repurchase agreements are collateralized by U.S. Government securities as well as repurchase agreements collateralized by equity securities, non-investment-grade debt, and all other instruments in which a Fund can perfect a security interest.

The Funds may invest in exchange-listed and non-exchange-listed preferred securities, exchange-listed or non-exchange-listed real estate investment trusts, and restricted securities,

The Manager may make investments in the following types of derivatives: Futures (both long and short positions); U.S. exchange-traded as well as over-the-counter (''OTC'') options (including options on futures and swaps);[25] forwards; and swaps,[26] including interest rate swaps (exchanging a floating rate for a fixed rate), total return swaps (exchanging a floating rate for the total return of an index, security, or other instrument or investment), and credit default swaps (buying or selling credit default protection).[27] The Funds' derivative investments would overlie Debt Securities, hybrid securities,[28] interest rates, currencies, or related indexes. Currency-related derivatives include foreign exchange (''FX'') transactions such as FX forwards, non-deliverable forwards, and cross-currency FX trades (''Currency-related Derivatives'').

The Funds may conduct foreign currency transactions on a spot (*i.e.,* cash) basis or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies). The Funds may invest in options and futures relating to foreign currencies.[29]

The Funds may engage in transactions with financial institutions that are, or may be considered to be, ''affiliated persons'' of the Funds under the 1940 Act.[30] These transactions may involve repurchase agreements with custodian banks; short-term obligations of, and repurchase agreements with, the 50 largest U.S. banks (measured by deposits); municipal securities; U.S. Government securities with affiliated financial institutions that are primary dealers in these securities; short-term currency transactions; and short-term borrowings.

Additional Limitations on Investments

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager or Sub-Advisers.[31] Each Fund

[21] The Funds will invest only in ADRs, EDRs, and GDRs that are traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[22] Structured securities (also called ''structured notes'') are derivative debt securities, the interest rate on or principal of which is determined by an unrelated indicator. The Funds may invest in ''indexed securities,'' which are instruments whose prices are indexed to the prices of other securities, securities indexes, or other financial indicators.

[23] A hybrid security generally combines both debt and equity characteristics. A common type of hybrid security is a convertible bond that has features of a debt security, until a certain date or triggering event, at which point the security may be converted into an equity security. A hybrid security may also be a warrant, convertible security, certificate of deposit, or other evidence of indebtedness.

[24] *See* Amendment No. 2, *supra* note 5.

[25] The Funds may also buy and sell options on swaps (swaptions), which are generally options on interest rate swaps.

[26] To limit the counterparty risk involved in swap agreements, a Fund will enter into swap agreements only with counterparties that meet certain standards of creditworthiness.

[27] Investments in derivatives may have a leveraging effect on a Fund. Not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[28] *See* Amendment No. 2, *supra* note 5.

[29] The Funds' investments in foreign currency options will be exchange-listed.

[30] The Exchange states that, in accordance with exemptive orders issued by the Commission, each Fund's Board of Trustees has established and periodically reviews procedures applicable to transactions involving affiliated financial institutions. *See* Notice, *supra* note 3, 79 FR at 25913.

[31] The Exchange states that each Fund currently does not intend to purchase any asset if, as a result, more than 10% of its net assets would be invested in assets that are deemed to be illiquid because they are subject to legal or contractual restrictions on resale or because they cannot be sold or disposed of in the ordinary course of business at approximately the prices at which they are valued. For purposes of a Fund's illiquid assets limitation discussed above, if through a change in values, net assets, or other circumstances, the Fund were in a position where more than 10% of its net assets were invested in illiquid assets, it would consider appropriate steps to protect liquidity. According to the Registration Statement, various factors may be considered in determining the liquidity of the Fund's investments, including: (1) The frequency of trades and quotes for the asset; (2) the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; (3) dealer undertakings to make a market in the asset; and (4)

would monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and would consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Any foreign equity securities in which a Fund may invest would be limited to securities that trade in markets that are members of ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or that are parties to a comprehensive surveillance sharing agreement with the Exchange.

## III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [32] and the rules and regulations thereunder applicable to a national securities exchange.[33] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[34] which requires, among other things, that the Exchange's rules 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. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[35] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. According to the Exchange, quotation and last-sale information for the Shares and underlying securities that are U.S. exchange listed, including ETFs, ETPs, ETNs, ADRs, EDRs, GDRs, exchange-traded REITs, exchange-traded preferred securities, and exchange-traded convertible securities, will be available via the Consolidated Tape Association (''CTA'') high-speed line.[36] Quotation and last-sale information for such U.S. exchange-listed securities as well as futures will be available from the exchange on which they are listed.[37] Quotation and last-sale information for exchange-listed options will be available via the Options Price Reporting Authority.[38] Quotation information for OTC-Traded Securities and investment company securities (excluding ETFs), as well as for OTC-traded derivative instruments (such as options, swaps, forwards, and Currency-related Derivatives), may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.[39] In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[40] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund would disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that would form the basis for such Fund's calculation of NAV at the end of the business day.[41] The NAV of each Fund normally would be determined once daily Monday through Friday, generally as of the regularly scheduled close of business of the New York Stock Exchange (normally 4:00 p.m. Eastern Time) on each day the New York Stock Exchange is open for trading. A basket composition file, which would include the security names and share quantities required to be delivered in exchange for each Fund's Shares, together with estimates and actual cash components, would be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares would be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares would be published daily in the financial section of newspapers. The Web site for the Funds would include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of each Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[42] In addition, trading in the Shares would be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities or financial instruments constituting the Disclosed Portfolio of a Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[43] Further, the

the nature of the asset and the nature of the marketplace in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the asset).

[32] 15 U.S.C. 78f.

[33] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[36] *See* Notice, *supra* note 3, 79 FR at 25916.

[37] *See id.*

[38] *See id.*

[39] *See* Amendment No. 2, *supra* note 5.

[40] The Exchange states that several major market data vendors display or make widely available Portfolio Indicative Values taken from the CTA or other data feeds. *See* Notice, *supra* note 3, 79 FR at 25916, n.58.

[41] On a daily basis, each Fund will disclose for each portfolio security and other financial instrument of the Fund the following information: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. *See* Amendment No. 2, *supra* note 5. The Web site information will be publicly available at no charge. *See* Notice, *supra* note 3, 79 FR at 25916.

[42] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[43] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of

Continued

Commission notes that the Reporting Authority that provides the Disclosed Portfolio of each Fund must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[44] In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded options, futures, exchange traded-equity securities (including ADRs, EDRs, and GDRs), and other exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Commission also notes that FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine.[45] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[46] The Exchange represents that the Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers, and that each (1) has implemented a firewall with respect to affiliated broker-dealers regarding access to information concerning the composition of or changes to the portfolios, and (2) would be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolios.[47]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing surveillance procedures administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Exchange Act,[48] as provided by NYSE Arca Equities Rule 5.3.

(6) A Fund may hold up to an aggregate amount of 15% of its net assets (calculated at the time of investment) in assets deemed illiquid by the Adviser, consistent with Commission guidance.

(7) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

(8) Each Fund will invest no more than 20% of its total assets in mortgage-backed securities or in other asset-backed securities, provided that this limitation does not apply to U.S. Government securities.

(9) The Funds will invest only in ADRs, EDRs, and GDRs that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(10) Not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(11) The Funds' investments in foreign currency options will be exchange-listed. This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 6(b)(5) of the Act[49] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–46 on the subject line.

Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of each Fund. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[44] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[45] *See* Notice, *supra* note 3, 79 FR at 25917.

[46] *See id.*

[47] *See supra* note 11. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[48] 17 CFR 240.10A–3.

[49] 15 U.S.C. 78f(b)(5).

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–46. 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–NYSEArca–2014–46 and should be submitted on or before August 29, 2014.

## V. Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of Amendment No. 2 in the **Federal Register**. Amendment No. 2 supplements the proposed rule change by, among other things: (1) Re-designating certain asset classes (*i.e.,* junior loans, structured securities, and securities believed to have debt-like characteristics, including hybrid securities) as non-primary investments; (2) providing additional information regarding the NAV valuation of Funds' junior loans, structured securities, and hybrid securities; (3) expanding the information to be disclosed daily about the portfolio of each Fund on the Funds' Web site; and (4) providing information regarding the availability of price information for OTC-traded derivative instruments, which may be held by the Funds. The Commission believes that this additional information should aid in the pricing of the Shares. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[50] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

## VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[51] that the proposed rule change (SR–NYSEArca–2014–46), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18746 Filed 8–7–14; 8:45 am]

**BILLING CODE 8011–01–P**

[50] 15 U.S.C. 78s(b)(2).

[51] 15 U.S.C. 78s(b)(2).

[52] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72747; File No. SR–MIAX–2014–28]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Approving Proposed Rule Change To Amend Rule 515 To Terminate the Liquidity Refresh Pause Early in Certain Situations

August 4, 2014.

## I. Introduction

On June 5, 2014, Miami International Securities Exchange LLC (''MIAX'' 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 MIAX Rule 515. The proposed rule change was published for comment in the **Federal Register** on June 23, 2014.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Liquidity Refresh Pause, set forth in MIAX Rule 515(c)(2), provides an opportunity for additional orders or quotes to be received where an incoming order (''initiating order'') exhausts a Market Maker's quote that was all or part of the MIAX best bid or offer (''MBBO'') when MIAX was alone at the national best bid or offer (''NBBO'') and there are unexecuted contracts remaining from the initiating order. Specifically, the Liquidity Refresh Pause is utilized in instances where (a) either the initiating order is a limit order that crosses the NBBO or the initiating order is a market order, and the limit order or market order could only be partially executed; (b) a Market Maker quote was all or part of the MBBO when the MBBO is alone at the NBBO; and (c) the Market Maker quote was exhausted.[4]

The Exchange proposes to amend MIAX Rule 515(c)(2) in order to address the case where, during the Liquidity Refresh Pause, an Away Best Bid or Offer (''ABBO'') on the same side of the market as the initiating order (a ''same-side ABBO'') crosses the original NBBO price on the opposite side of the market. The proposed rule change would provide that, in such a situation, the Liquidity Refresh Pause will be terminated early and normal trading will resume. The Exchange states that the proposed change is designed to codify existing functionality during the liquidity refresh pause.[5]

The following examples describe how a new revised same-side ABBO that crosses the original NBBO on the opposite side of the market will terminate the Liquidity Refresh Pause early.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72408 (June 17, 2014), 79 FR 35625.

[4] At the start of the Liquidity Refresh Pause, the system broadcasts a ''liquidity refresh message'' to subscribers of the Exchange's data feeds, providing a description of the option and the size and side of the order and the exhausted MBBO price. During the pause, the system displays the unexecuted remainder of the initiating order at the original NBBO price (*i.e.,* the exhausted MBBO price) and MIAX's next bid or offer on the opposite side is displayed as non-firm.

[5] *See* Notice, *supra* note 3, at 35625.

*Example 1:* Same Side ABBO Terminates the Liquidity Refresh Pause Early

| | Bid | Ask |
|---|---|---|
| ABBO | 1.00 (10) | 1.14 (10) |
| MIAX Book: | | |
| PLMM[6] | 1.00 (10) | 1.10 (10) |
| LMM 1 | 1.00 (10) | 1.12 (10) |
| LMM 2 | 1.00 (10) | 1.15 (10) |
| RMM 1 | 1.00 (10) | 1.16 (10) |

- Order 1: Buy limit of 1.13 for 20 contacts with a price protection instruction of 3 MPVs.[7]
- NBBO at time of Order 1's arrival = 1.00 (50) x 1.10 (10).
- Order 1 is price protected at 1.13 (which is 1.10 + 3 MPV = 1.13).
- Order 1 trades 10 contracts with PLMM @1.10.
- Liquidity Refresh Pause is triggered because the MBO of 1.10[8] was alone at NBBO and PLMM's 1.10 offer was exhausted.
- New MBBO = 1.10 (10) x 1.12 (10).[9]
- ABB updates to 1.12 for 10 contracts; ABBO = 1.12 (10) x 1.14 (10).
- Liquidity Refresh Pause is terminated early due to the ABB crossing the original NBO of 1.10.
- Because no responses to the Liquidity Refresh Pause were received before it terminated early, Order 1 trades 10 contracts with LMM1 @1.12, after which Order 1 has been fully executed.
- New MBBO: 1.00 (40) x 1.15 (10). New NBBO: 1.12 (10) x 1.14 (10).

## III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal is reasonable in its rationale that terminating the Liquidity Refresh Pause, when the ABBO on the same side of the market as the initiating order crosses the original NBBO price on the opposite side of the market, could allow interest in the Liquidity Refresh Pause to execute, because a move of this kind in the ABBO indicates that conditions may be changing so as to render the initiating order and same side orders/quotes no longer marketable. Terminating the Liquidity Refresh Pause early and permitting normal trading to resume may thus provide an opportunity for the broker routing the initiating order or any remainder thereof to further pursue an execution, assuming that subsequent responses to the Liquidity Refresh Pause would be unlikely when the ABBO moves in such a manner, even if the pause were to run its full course.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–MIAX–2014–28), is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18745 Filed 8–7–14; 8:45 am]

**BILLING CODE 8011–01–P**

[6] A ''PLMM'' is a MIAX Primary Lead Market Maker; an ''LMM'' is a MIAX Lead Market Maker; and an ''RMM'' is a MIAX Registered Market Maker.

[7] Executions of non-market maker orders on MIAX are subject to the ''price protection'' provisions of Exchange Rule 515(c)(1). Price protection prevents an order from being executed beyond the price designated in the order's price protection instructions, which are expressed in units of ''MPV'' away from the NBBO at the time of the order's receipt, or the MBBO if the ABBO is crossing the MBBO. (The MPV is the minimum price variation, or minimum increment, by which bids and offers may be separated.) Market participants may designate or disable price protection instructions on an order by order basis. The default price protection is one MPV. When triggered, price protection cancels an order or the remaining contracts of an order.

[8] ''MBO'' and ''MBB'' refer to the two components of the MBBO separately. ''NBB'' and ''NBO'' and ''ABB'' and ''ABO'' and are the equivalent conventions used for components of the ABBO and MBBO separately.

[9] The remaining 10 contracts of Order 1 to buy are posted at 1.10 (the price at which the first 10 contracts were bought), which becomes the new MBB. Note that the new MBO is displayed as non-firm. *See supra* note 4.

[10] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72752; File No. SR–OCC–2014–17]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Permit OCC To Adjust the Size of Its Clearing Fund Intra-Month and Clearing Member's Clearing Fund Contributions Intra-Month

August 4, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by OCC.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend its Rules to permit OCC to increase the size of its clearing fund intra-month based upon observed changes in OCC's projected exposure and on an emergency basis. In addition, the proposed change provide [sic] that under certain circumstances OCC will increase a clearing member's required contribution to OCC's clearing fund intra-month.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC also filed the proposals in this proposed rule change as an advance notice under Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010. *See* SR–OCC–2014–804; 12 U.S.C. 5465(e)(1).

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

OCC is proposing to modify Rule 1001, which concerns the sizing of OCC's clearing fund and the allocation of clearing member contributions thereto. First, by adding Interpretation and Policy .05, Rule 1001 would be revised to permit OCC to increase the size of its clearing fund intra-month based upon observed changes in OCC's projected exposure or on an emergency basis. Second, by adding Interpretation and Policy .06, Rule 1001 would be revised to permit increases to a clearing member's required contribution to the clearing fund at any time, including between regular monthly calculations, under certain circumstances. Rule 1001(b) and 1001(f) would also be revised to clarify certain terminology relating to the calculation of clearing fund contributions, and an Interpretation and Policy would be added to Article VIII, Section 2 of the By-Laws to clarify that this section, which addresses rule changes that increase a clearing member's required clearing fund contributions, does not apply to actions taken under Interpretations and Policies .05 or .06 to Rule 1001. This proposed rule change was also filed as an Advance Notice filing (SR–OCC–2014–804).

Background

The primary purpose of OCC's clearing fund is to provide a high degree of assurance that market integrity will be maintained in the event that one or more clearing members fails to meet its obligations to OCC.[4] The clearing fund can also be used to meet the obligations resulting from the default of any bank or securities or commodities clearing organization to which OCC is exposed. The clearing fund supplements the financial safeguards afforded by OCC's membership standards and margin requirements.

Currently, the size of the clearing fund is adjusted monthly. On each business day OCC calculates its hypothetical exposure, at a confidence level of at least 99%, under simulated default scenarios that include an ''idiosyncratic default'' of a single clearing member group [5] and a ''minor systemic event'' involving the near-simultaneous default of two random clearing members. OCC then treats the greater of these two hypothetical exposures as that day's projected peak exposure. OCC also computes the projected draws from the clearing fund that would be necessary in connection with each business day's projected peak exposure. To determine the overall size of the clearing fund, on the first business day of each month, OCC averages these daily projected clearing fund draws over the prior month and uses that average as the required size of the clearing fund for that month. However, notwithstanding this calculation, in no event will the size of the clearing fund be set at less than 110% of the size of OCC's committed credit facilities secured by the clearing fund, in order to assure that at all times OCC will have collateral to pledge sufficient to draw the entire amount of such facilities. OCC publishes the new clearing fund requirement on the first business day of each month and clearing members have five business days to meet the new requirement.[6]

The foregoing calculations and the allocations among clearing members are based on the prescribed formulas included in Rules 1001(a) and 1001(b), respectively, as supplemented by Interpretation and Policy .01 to Rule 1001. These formulas were adopted pursuant to a rule change effective April 18, 2013.[7] The Rules do not, however, provide for increases to the overall size of the clearing fund between such monthly adjustments, nor do the Rules provide for adjustments to a clearing member's required contribution between such monthly calculations.

Proposed Change To Authorize Certain Adjustments to the Total Size of the Clearing Fund and Individual Clearing Members' Required Contributions

In order to mitigate the risks of an underfunding of the clearing fund, the proposed changes to the Rules would provide OCC with the authority to increase the total size of the clearing fund intra-month upon a significant and sustained increase in exposure based on daily projected clearing fund draw calculations, as described above, and on an emergency basis for the protection of OCC or in the public interest. The proposed changes would also provide OCC with the authority to increase a clearing member's required clearing fund contribution under certain circumstances reflecting a change in the clearing member's financial condition or risk profile.

Adjustments to the Overall Size of the Clearing Fund

OCC would have the authority to increase the overall size of the clearing fund intra-month in the event that the five-day rolling average of the projected draws against the clearing fund are 150% or more of the size of the clearing fund. This threshold is intended to ensure that intra-month increases in clearing fund size are limited to occasions in which the increase in exposure is significant and prolonged. Based on OCC staff's analysis of historical clearing fund data beginning in July 2011, the use of this 150% threshold would have resulted in only four changes to the clearing fund's size during this period, one of which related to firm-specific changes and three of which related to increased volatility prior to and during the events related to the downgrade of the U.S. Government's credit rating and the ongoing debt crisis of that period. In the event that the 150% threshold is exceeded over a five-day period, OCC's Executive Chairman or President would have the authority to approve an increase in the clearing fund's size. The Risk Committee of OCC's Board would be informed of such officer's determination as soon as practicable. OCC would also provide notification to the SEC and CFTC in the same manner as if an emergency waiver or suspension of OCC's Rules occurred.[8]

The Risk Committee would also be permitted to approve an increase in the clearing fund's size on an emergency basis upon its determination that such action is necessary for the protection of OCC or in the public interest, and OCC would then provide notification to the Board of Directors, SEC and CFTC in the same manner as if an emergency waiver or suspension of OCC's Rules occurred.[9] OCC believes that these processes ensure proper management and board-level oversight regarding decisions to increase the clearing fund size.

Upon an intra-month increase in the clearing fund's size, clearing members would generally be given two business

[4] *See,* Article VIII, Section 1 of OCC's By-Laws which sets forth the purpose of the clearing fund.

[5] A Clearing Member Group is a clearing member and any other clearing member that is affiliated with such clearing member. *See* Article 1, Section 1,C.(15) of OCC's By-Laws.

[6] *See* OCC Rules 1002 and 1003, respectively.

[7] Securities Exchange Act Release No. 69403 (April 18, 2013), 78 FR 24257 (April 24, 2013) (SR–OCC–2013–02).

[8] *See* OCC's By-Laws Article IX, Section 14.

[9] In recommending that the Risk Committee approve an emergency increase in the size of the clearing fund, OCC would follow the process set forth in OCC's By-Laws Article IX, Section 14 in that the Executive Chairman, Management Vice Chairman or President, in his, her or their judgment, would determine that: (1) An emergency exists, and (2) such an increase is necessary or advisable for the protection of OCC or otherwise in the public interest.

days to satisfy any deficit,[10] and the increase would generally remain in effect until the next regular monthly calculation occurs unless the Risk Committee determines that a further increase is warranted or the 150% threshold is triggered more than once during the same month. The foregoing changes to OCC's Rules would not affect the basic clearing fund methodology as previously approved by the SEC, nor would they affect allocation of the clearing fund among clearing members.[11] OCC has discussed the proposed changes with its Financial Risk Advisory Council, a working group consisting of representatives of clearing members and exchanges formed by OCC to review and comment on various risk management proposals. They additionally were discussed with the OCC Operations Roundtable, also consisting of representatives of clearing members and exchanges, which considers operational efficiencies and improvements. No concerns were raised by either working group during the course of these discussions.

Adjustments to Individual Clearing Members' Required Contributions

The proposed rule change would also permit OCC to increase individual clearing members' required clearing fund contributions in three circumstances. The first circumstance exists when a clearing member's required clearing fund contribution exceeds its net capital.[12] In this situation, the clearing member is placed on OCC's ''Watch Level III'' surveillance, which is used to assess a clearing member's ability to meet a call to replenish its clearing fund contribution and requires certain OCC executive officers to consider protective measures with respect to such clearing member. One such protective measure would be to add the amount of such excess to the clearing member's required clearing fund contribution, thereby funding such difference in advance of the regular monthly calculation.[13] No subsequent adjustment thereunder would be permitted under the applicable Rule provision until the earlier of the next adjustment of the clearing fund (either as a result of the next monthly adjustment or as a result of an increase in the total clearing fund pursuant to the rule changes described above) or the next required reporting of the clearing member's net capital.

The second circumstance is the merger or consolidation of two or more clearing members, in which case the variable amount of the required clearing fund contribution for the surviving clearing member would be adjusted so that it equals the sum of such amount for the surviving clearing member and the total of such amounts for all other clearing members involved in the transaction. Such adjusted amount would be substituted for the variable amount previously calculated for the surviving clearing member.

The third circumstance is the transfer of positions between clearing members, in which case OCC would be able to adjust the clearing fund contributions of the transferor clearing member and the transferee clearing member after giving effect to the transfer, subject to the agreement of the two clearing members. The amount of such adjustment would affect the variable amount of each clearing member's required clearing fund contribution and, irrespective of the amount or size of the positions transferred, each clearing member would continue to be required to maintain OCC's minimum clearing fund contribution.

Proposed Changes to By-Laws and Rules

OCC is proposing to add an Interpretation and Policy .05 under Rule 1001 to provide for the authority to increase the size of the clearing fund on an intra-month basis. Subparagraph (a) of proposed Interpretation and Policy .05 would authorize OCC's Executive Chairman or President, or the Risk Committee, to increase the clearing fund size as described above (*i.e.,* based on the daily calculations or by the Risk Committee on an emergency basis).

Proposed Interpretation and Policy .06 under Rule 1001 would provide for the authority to increase individual clearing members' required clearing fund contributions in certain circumstances. Subparagraph (a) would provide for an increase when a clearing member's required clearing fund contribution exceeds its net capital, subparagraph (b) would provide for an increase in the event of a merger or consolidation involving clearing members and subparagraph (c) would provide for an increase in the event of a transfer of positions between clearing members, in each case as described above.

Subparagraph (b) of proposed Interpretation and Policy .05 and subparagraphs (a), (b) and (c) of proposed Interpretation and Policy .06 would provide that if the total size of the clearing fund size or an individual clearing member's required contribution is increased, as applicable, the variable amount would be increased accordingly for each clearing member, and this increase would be effective for all purposes under OCC's By-Laws and Rules, including each clearing member's required contribution in the event the clearing fund is fully depleted in connection with the insolvency of a clearing member.[14] However, subparagraph (b) of proposed Interpretation and Policy .05 and subparagraphs (a), (b) and (c) of proposed Interpretation and Policy .06 would specify that the variable amount would remain subject to nonstandard calculations for futures-only affiliated clearing members and clearing members that have deposited the minimum required clearing fund contribution.

An example will illustrate the manner in which the total size of the clearing fund and individual clearing members' contributions could be adjusted pursuant to Interpretation and Policy .05 to Rule 1001. The example assumes that OCC's total clearing fund requirement is $1 million divided among five clearing members. Member One has the minimum requirement of $150,000, Member Two has a requirement of $212,500 and the other three comprise the remainder in differing amounts. If OCC determined, based on the most recent five-day rolling average of clearing fund draws, that it should resize the fund to $1.5 million, Member One would maintain the minimum requirement of $150,000 and the other four members would be

[10] Intra-month clearing fund adjustments will only occur in limited circumstances and will be due to certain events that could materially affect the overall liquidity of OCC. Based on feedback OCC received from clearing members, OCC believes that providing a clearing member with one day to absorb the increase, including determining the most effective manner in which to collateralize the increase, and a second day to fund the increase strikes the proper balance between effective risk management and not causing material disruptions to a clearing member's business.

[11] In particular, the contributions of futures-only affiliated clearing members and clearing members depositing the required minimum clearing fund contribution, respectively, would not be adjusted in connection with any increase in the clearing fund size.

[12] In this context, and for clearing members that are registered broker-dealers, net capital means net capital computed in accordance with Securities Exchange Act Rule 15c3–1. For clearing members that are futures commission merchants, net capital means adjusted net capital computed in accordance with CFTC Regulation Section 1.17 and for Canadian clearing members, net capital means risk-adjusted capital computed in accordance with Investment Industry Regulatory Organization of Canada Rule 17.1.

[13] Pursuant to Interpretation and Policy .01 to Article VIII, Section 5 of OCC's By-Laws, a clearing member's clearing fund contribution is used to determine the clearing member's share of any clearing fund deficiency resulting from a clearing member insolvency.

[14] *See* Interpretation and Policy .01 to Article VIII, Section 5 of OCC's By-Laws.

assessed the incremental amount totaling $500,000. Member Two would be assessed $125,000 because the firm's *pro rata* share of the original clearing fund requirement excluding Member One's minimum requirement equaled 25%, *i.e.,* $212,500 divided by $850,000. Member Two's new clearing fund requirement would be $337,500 until the next clearing fund sizing calculation. The other three members would be assessed their share of the remaining $375,000 (using a denominator of $850,000 as with Member Two) so that the total clearing fund requirement of $1.5 million is satisfied.

Subparagraph (c) of proposed Interpretation and Policy .05 and subparagraph (d) of proposed Interpretation and Policy .06 would provide that as soon as practicable after any increase in the total size of the clearing fund size or an individual clearing member's required contribution, as applicable, OCC would provide notice to the affected clearing members, and such clearing members would be required to satisfy their deficits within two business days of such notice in the case of adjustments pursuant to Interpretation and Policy .05 and one business day in the case of adjustments pursuant to Interpretation and Policy .06. If, however, any deficit would be required to be satisfied on the first, second, third or fourth business day of a calendar month, it may instead be satisfied by the fifth business day of the calendar month. These subparagraphs also set forth that a resulting change in a clearing member's contribution to the clearing fund due to an increase in the clearing fund's size or an individual adjustment will be reflected on one or more reports made available by OCC, but that OCC will not revise the clearing member's Clearing Fund Statement.

Subparagraph (d) of proposed Interpretation and Policy .06 would further specify that OCC may require any deficit resulting from a merger of clearing members or the transfer of positions between clearing members to be satisfied prior to the occurrence of the merger or transfer. Moreover, subparagraph (e) of proposed Interpretation and Policy .06 would clarify that the individual adjustments under subparagraphs (a), (b), and (c) of proposed Interpretation and Policy .06 may result in an adjustment to the total size of the clearing fund.

To enhance the readability of the new Interpretations and Policies added to Rule 1001, the term ''fixed amount'' would be used to refer to the portion of a clearing member's clearing fund contribution calculated pursuant to clause (x) of Rule 1001(b), and the term ''variable amount'' would be used to refer to the portion of a clearing member's clearing fund contribution calculated pursuant to clause (y) of Rule 1001(b). Rule 1001(b) and 1001(f) would be amended solely for the purpose of introducing these defined terms.

Article VIII, Section 2(b) of OCC's By-Laws provides, among other things, that if a clearing member's clearing fund contribution is increased as a result of an amendment of the Rules, the increase will not be effective until the clearing member is given five business days' notice of the amendment. OCC proposes to add Interpretation and Policy .01 to Article VIII, Section 2 to clarify that such section shall not apply to increases in the total size of the clearing fund pursuant to Interpretation and Policy .05 of Rule 1001, nor to an increase in an individual clearing member's contribution pursuant to Interpretation and Policy .05 or .06 of Rule 1001.

While the proposed rule change may require clearing members to increase their clearing fund contributions at any time during a month, any such increase in the overall size of the clearing fund would correspond to a material change in OCC's projected exposure and would affect all clearing members proportionally in the same manner as a monthly adjustment, and any such increase in an individual clearing member's required contribution would correspond to a material change in the clearing member's business or financial condition, as well as use of OCC's resources. OCC therefore does not believe that clearing members will have significant problems in complying with the rule change. In addition to the prior communications with clearing members described above, in connection with the filing of this rule change, OCC will inform clearing members of the proposed change via an information memorandum, in order to advise clearing members of the procedures OCC intends to implement in support of the proposed rule change, including notice procedures to advise clearing members of any increases in contribution amounts.

2. Statutory Basis

OCC believes the proposed changes to OCC's Rules are consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''),[15] and the rules and regulations thereunder, including Rule 17Ad–22,[16] because the proposed modifications would help ensure that OCC maintain sufficient resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.[17] OCC's clearing fund safeguards and protects OCC, its clearing members and the securities and funds in OCC's custody and control from the default of one its clearing members. It is critical that the size OCC's clearing fund accurately reflect OCC's risk profile, and each clearing member's required clearing fund contribution accurately reflect its use of OCC's resources. The proposed changes would provide greater certainty with respect to the clearing fund's capitalization, thereby further assuring the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible.[18] The proposed changes are not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

*(B) Clearing Agency's Statement on Burden on Competition*

OCC does not believe that the proposed changes to the Rules would impose any burden on competition.[19] Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency, their customers and the markets that the clearing agency serves. The proposed changes primarily affect clearing members and OCC believes that the proposed modifications would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the changes would affect all clearing members equally. Subject to certain exclusions already provided for in OCC's Rules, all clearing members' contributions to the clearing fund would be subject to increase upon an increase to the overall size of the clearing fund and an individual clearing member's contribution to the clearing fund would be subject to increase upon a material change in its business or financial condition. While such increases may impose an increased financial burden on clearing members, any increase in the total size of the clearing fund will be calculated in accordance with the same formula used to determine regular monthly clearing fund contributions, which is tied to usage of OCC's services, and any clearing member-specific increase will reflect a material change in the clearing member's business or financial

[15] 15 U.S.C. 78q–1.

[16] 17 CFR 240.17Ad–22.

[17] 17 CFR 240.17Ad–22(b)(3).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 15 U.S.C. 78q–1(b)(3)(I).

condition.[20] Accordingly, no clearing member will bear a disproportionate share of any intra-month increase in the size of the clearing fund.

For the foregoing reasons, OCC believes that the proposed changes are in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impose a burden on competition because the changes would permit OCC to increase the size of its clearing fund intra-month in response to an increase in OCC's projected exposure, and to provide for adjustments of a clearing member's required clearing fund contribution at any time under specified circumstances reflecting a change in its financial condition or risk profile, thereby promoting the purposes of the Act and Rule 17Ad-22 thereunder as described above.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[21]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2014–17 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–17. 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_17.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–17 and should be submitted on or before August 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18749 Filed 8–7–14; 8:45 am]

**BILLING CODE 8011–01–P**

[20] *See* Rule 1001(b).

[21] OCC also filed the proposals in this proposed rule change as an advance notice under Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010. *See supra* note 3.

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72750; File No. SR–NYSE–2014–40]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Establishing the NYSE Best Quote & Trades Data Feed

August 4, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to establish the NYSE Best Quote & Trades (''NYSE BQT'') data feed. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to establish the NYSE BQT data feed. The NYSE BQT data feed would provide a unified view of best bid and offer (''BBO'') and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

last sale information for the Exchange and its affiliates, NYSE Arca Equities, Inc. (''NYSE Arca'') and NYSE MKT LLC (''NYSE MKT'').

Background

In 2009, the Securities and Exchange Commission (the ''Commission'') approved the NYSE Trades data feed and certain fees for it.[3] NYSE Trades is an NYSE-only market data feed that distributes on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams.

NYSE Arca established the NYSE Arca Trades data feed in 2009, and NYSE MKT established the NYSE MKT Trades data feed in 2010.[4] Similar to NYSE Trades, NYSE Arca Trades is an NYSE Arca-only data feed and NYSE MKT Trades is an NYSE MKT-only data feed. As with NYSE Trades, the NYSE Arca Trades and NYSE MKT Trades data feeds each distribute on a real-time basis the same last sale information that NYSE Arca and NYSE MKT report, respectively, under the CTA Plan for inclusion in the CTA Plan's consolidated data streams.

In 2010, the Commission approved the NYSE BBO data feed and certain fees for it.[5] NYSE BBO is an NYSE-only market data feed that distributes on a real-time basis the same BBO information that the Exchange reports under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream. The data feed includes the best bids and offers for all securities that are traded on the Exchange and for which NYSE reports quotes under the CQ Plan.

In 2010, the Commission also approved the NYSE Arca BBO and NYSE MKT BBO data feeds and associated fees.[6] As with NYSE BBO, NYSE Arca BBO is an NYSE Arca-only market data feed and NYSE MKT BBO is an NYSE MKT-only market data feed. Similar to NYSE BBO, NYSE Arca BBO and NYSE MKT BBO each distribute on a real-time basis the same BBO information that NYSE Arca and NYSE MKT report, respectively, under the CQ Plan for inclusion in the CQ Plan's consolidated quotation information data stream. NYSE Arca BBO includes the best bids and offers for all securities that are traded on NYSE Arca and for which NYSE Arca reports quotes under the CQ Plan. NYSE MKT includes the best bids and offers for all securities that are traded on NYSE MKT and for which NYSE MKT reports quotes under the CQ Plan.

Proposed NYSE BQT Data Feed

In response to customer requests, the Exchange proposes to establish the NYSE BQT data feed, a data feed consisting of certain data elements from six market data feeds—NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO. The Exchange does not currently offer this product. The NYSE BQT data feed would have three channels: One channel for the last sale data (the ''last sale channel''); another channel for the BBO data (the ''best quotes channel''); and a third channel for consolidated volume data (the ''consolidated volume channel'').

The last sale channel provides an aggregation of the same data that is available through NYSE Trades, NYSE Arca Trades, and NYSE MKT Trades.

The best quotes channel provides the NYSE BQT BBO, which is the best quote from among the NYSE BBO, NYSE Arca BBO, and NYSE MKT BBO based on the following criteria, in order:

- Price: the exchange with the highest bid or the lowest offer has overall priority;
- Size: the largest size takes precedence when multiple exchanges submit the same bid and/or offer price; and
- Time: the earliest time takes precedence when multiple exchanges submit the same bid and/or offer price with the same sizes.

For each security, the best quotes channel would only include one best bid and one best offer from among the three exchanges. The NYSE BQT BBO would be marked with a market center ID identifying the exchange from which the BBO originated. For example, if XYZ stock were traded on both NYSE and NYSE Arca, and the highest bid and lowest offer according to the NYSE BBO were 1,000 shares at $10.00 and 1,000 shares at $10.03, respectively, and the highest bid and lowest offer for XYZ stock according to the NYSE Arca BBO were 1,200 shares at $9.99 and 900 shares at $10.02, respectively, then NYSE BQT would generate the best bid for XYZ stock as 1,000 shares at $10.00 on NYSE and the best offer at 900 shares at $10.02 on NYSE Arca.

The consolidated volume channel will carry consolidated volume for all listed equities in a manner consistent with the requirements for redistributing such data as set forth in the securities information processor plans.[7]

NYSE BQT would also provide related data elements, such as trade and security status updates (*e.g.,* trade corrections and trading halts).

The Exchange proposes to offer NYSE BQT through the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network and market data vendors, as the Exchange does with its other proprietary market data products.

The Exchange believes that NYSE BQT would provide high-quality, comprehensive last sale and BBO data for the Exchange, NYSE Arca, and NYSE MKT in a unified view and respond to subscriber demand for such a product. The Exchange notes that an anticipated end user might use NYSE BQT for purposes of identifying an indicative price of Tape A, B, and C securities through leveraging the depth and breadth of NYSE, NYSE Arca, and NYSE MKT without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use the NYSE BQT data for purposes of making order-routing or trading decisions. Rather, the Exchange notes that under Rule 603 of Regulation NMS, NYSE BQT could not be substituted for consolidated data in all instances in which consolidated data is used and certain subscribers would still be required to purchase consolidated data for trading and order-routing purposes.[8]

Exchange Not an Exclusive Distributor of NYSE BQT

The Exchange proposes to offer the NYSE BQT data feed in a capacity similar to that of a vendor. The Exchange, NYSE Arca, and NYSE MKT are the exclusive distributors of the six BBO and Trades feeds[9] from which certain data elements would be taken to create the NYSE BQT. By contrast, the Exchange would not be the exclusive

[3] *See* Securities Exchange Act Release Nos. 59290 (Jan. 23, 2009), 74 FR 5707 (Jan. 30, 2009) (SR–NYSE–2009–05); 59606 (Mar. 19, 2009), 74 FR 13293 (Mar. 26, 2009) (SR–NYSE–2009–04).

[4] *See* Securities Exchange Act Release Nos. 59289 (Jan. 23, 2009), 74 FR 5711 (Jan. 30, 2009) (SR–NYSEArca-2009–06); 59598 (Mar. 18, 2009), 74 FR 12919 (Mar. 25, 2009) (SR–NYSEArca-2009–05); 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[5] *See* Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30).

[6] *See* Securities Exchange Act Release Nos. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23); 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[7] The ''securities information processor plans'' refer to the CTA Plan and Nasdaq UTP Plan. *See* Telephone conversation between Leah Mesfin, Special Counsel, Division of Trading & Markets, Commission, and Marija Willen, Chief Counsel of NYSE Group Inc., NYSE (July 30, 2014).

[8] 17 CFR 242.603(c).

[9] These other data feeds are offered pursuant to pre-existing and already effective rules filed with the Commission; those rules will not be altered by this filing.

distributor of the aggregated and consolidated information that would compose the proposed NYSE BQT data feed. Other vendors would be able, if they chose, to create a data feed with the same information as proposed for inclusion in NYSE BQT, and to distribute it to clients with no greater latency than the Exchange would be able to distribute NYSE BQT. In addition, the pricing the Exchange would charge clients for NYSE BQT would not be lower than the cost to a vendor of receiving the underlying data feeds and of maintaining co-located operations to receive such data feeds with no greater latency than the Exchange.

After creating the NYSE BQT, the Exchange would distribute this data feed through SFTI and market data vendors. The path for distribution by the Exchange of this data would not be faster than a vendor that independently created an NYSE BQT-like product could distribute its own product. As such, the proposed NYSE BQT data feed is a data product that a competing vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with NYSE Arca and NYSE MKT, the Exchange represents that the source of the market data it uses to create the proposed NYSE BQT is the same as the source available to other vendors.

With respect to latency, the Exchange, NYSE Arca, and NYSE MKT are located in the same data center in Mahwah, New Jersey. The system creating and supporting the proposed NYSE BQT data feed would need to obtain the six underlying data feeds from these three exchanges before it could aggregate and consolidate information to create NYSE BQT and then distribute it to end users. The Exchange also offers third parties access to its data center through co-location. Accordingly, a competing market data vendor co-located in the Exchange's Mahwah, New Jersey facility offering a similar competing product would similarly need to obtain the six underlying data feeds.

The Exchange has designed the NYSE BQT data feed so that it would not have a competitive advantage over a competing vendor with respect to the speed of access to those six underlying data feeds. Likewise, the NYSE BQT data feed would not have a speed advantage vis-à-vis competing vendors co-located in the data center with respect to access to end user customers, whether those end users are also co-located or not. As such, a market data vendor could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level playing field with respect to the speed that the Exchange could create and redistribute the NYSE BQT data feed.

With respect to cost, the Exchange will file a separate rule filing to establish the fees for NYSE BQT. To ensure that vendors could compete with the Exchange by creating the same product as NYSE BQT and sell it to their clients, the Exchange would charge its clients for the NYSE BQT feed an amount that represents the cost to a market data vendor to obtain the six underlying data feeds, plus $1,000 per month to reflect the value of the aggregation and consolidation function. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location costs to a particular vendor might be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a competing vendor could create and offer a product similar to the proposed NYSE BQT data feed at a similar cost. For these reasons, the Exchange believes that vendors could readily offer a product similar to NYSE BQT on a competitive basis.

The Exchange will announce the effective date of the proposed rule change in a notice to be published as soon as practicable following approval of the proposed rule change by the Commission. The Exchange anticipates making available the NYSE BQT data feed as soon as practicable after approval of the proposed rule change by the Commission.

2. Statutory Basis

As noted above, the Exchange would be acting in the capacity of a vendor with respect to the proposed NYSE BQT data feed. The proposed NYSE BQT data feed is a product that relies on the Exchange's receipt of underlying data, which is available to all market participants, before it can aggregate and consolidate information to create the NYSE BQT; this is a process that a competing vendor could also perform. Accordingly, although the Exchange might be the only distributor of the NYSE BQT data feed initially, it is not an exclusive position to provide a product like the NYSE BQT data feed. Because the Exchange is acting in a vendor capacity, the Exchange does not believe that its proposed NYSE BQT data feed is subject to review under the Act.[10] Nonetheless, the Exchange believes that the proposed rule change is consistent with Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5)[12] of the Act, in particular, in that it is designed 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

Specifically, the Exchange has taken into consideration its affiliated relationship with NYSE Arca and NYSE MKT in its design of the NYSE BQT data feed to assure that similarly situated competing vendors would be able to offer a similar product on the same terms as the Exchange, both from the perspective of latency and cost. As discussed in detail above, the Exchange proposes to begin offering the NYSE BQT data feed voluntarily in response to demand from vendors and subscribers that are interested in receiving BBO and last sale information from the Exchange, NYSE Arca, and NYSE MKT in a unified view. Specifically, portfolio managers, wealth managers, back-office employees, and others are looking for a cost-effective, easy-to-administer, high-quality market data product with the characteristics of the NYSE BQT data feed. The NYSE BQT data feed will help to protect a free and open market by providing vendors and subscribers with additional choices in receiving this type of market data, thus promoting competition and innovation.

The Exchange believes that NYSE BQT will offer an alternative to the use of consolidated data products and proprietary data products such as NASDAQ Basic and NLS Plus in certain circumstances. NASDAQ Basic, which is offered by The NASDAQ Stock Market, Inc. (''NASDAQ'') pursuant to NASDAQ Rule 7047, provides best bid and offer and last sale information for all U.S. exchange-listed securities (including NYSE and its affiliates) based on liquidity within NASDAQ, as well as trades reported to the FINRA/NASDAQ Trade Reporting Facility (''TRF''), including NASDAQ last sale, NASDAQ

[10] The Exchange reserves the right to argue, with respect to the NYSE BQT data feed or any other product, that there is no requirement for a filing under Section 19 of the Act to enable the Exchange to offer such products.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

BBO, NASDAQ opening and closing prices, and other market status information. According to NASDAQ, seven vendors offer and more than 1,000 firms subscribe to NASDAQ Basic, including 9 of the 10 largest banks.[13]

NLS Plus is a data product that is offered by NASDAQ OMX Information, LLC, a NASDAQ affiliate that is not a self-regulatory organization (''SRO''); neither NLS Plus nor its pricing was subject to the rule filing process. NLS Plus provides all trade data from NASDAQ, the FINRA/NASDAQ TRF, NASDAQ OMX BX, and NASDAQ OMX PSX, as well as consolidated volume information as part of each trade message.[14]

BATS Global Markets (''BATS'') has announced that it intends to offer a market data product that provides a unified view of the aggregated best bid and offer, last sale, and optional depth information (five levels), including size, for all four equity exchanges operated by BATS.[15] The Exchange believes that NYSE BQT will offer a competitive alternative to the two existing NASDAQ products and the proposed BATS product, but notes that, unlike BATS, it is offering NYSE BQT in the capacity of a vendor.

In addition, the proposal would not permit unfair discrimination because the product will be available to all of the Exchange's customers through SFTI and market data vendors on an equivalent basis. In addition, any customer that wished to continue to be able to purchase one or more of the individual underlying data feeds would be able to do so.

In addition, the Exchange does not believe that the proposal would permit unfair discrimination among customers, brokers, or dealers and thus is consistent with the Act because the Exchange will be offering the product on terms that a competing vendor could offer a competing product. Specifically, the proposed data feed does not represent Exchange core data, but rather a new product that represents an aggregation and consolidation of existing, previously filed market data products of the Exchange, NYSE Arca, and NYSE MKT. As such, a competing vendor could similarly obtain the six underlying data feeds and perform a similar aggregation and consolidation function to create the same data product with the same latency. More specifically, a competing vendor that is co-located in the Exchange's Mahwah, New Jersey data center could obtain the six underlying data feeds from the Exchange, NYSE Arca, and NYSE MKT on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed NYSE BQT data feed and provide the same type of product to its customers with the same latency they could achieve by purchasing the NYSE BQT product from the Exchange. As such, the Exchange would not have any unfair advantage over competing vendors with respect to obtaining data from NYSE Arca and NYSE MKT; in fact, the technology supporting the NYSE BQT data feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a competing vendor co-located at the data center. In addition, the Exchange would be charging for the proposed NYSE BQT data feed competitively with the price that a competing vendor could assess for a competing product.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[16] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange proposes to offer the NYSE BQT data feed in a capacity similar to that of a vendor. Although the Exchange, NYSE Arca, and NYSE MKT are the exclusive distributors of the six BBO and Trades feeds from which certain data elements would be taken to create the NYSE BQT, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed NYSE BQT data feed. Vendors would be able, if they chose, to create a data feed with the same information as the NYSE BQT and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed BQT data feed. In addition, the pricing the Exchange would charge clients for NYSE BQT would not be lower than the cost to a vendor of receiving the underlying data feeds and of maintaining co-located operations to receive and distribute such data feeds with no greater latency than the Exchange.

With respect to latency, the Exchange, NYSE Arca, and NYSE MKT are located in the same data center in Mahwah, New Jersey. The system creating and supporting the proposed NYSE BQT data feed would need to obtain the six underlying data feeds from these three exchanges before it could aggregate and consolidate information to create NYSE BQT and then distribute it to end users. A competing market data vendor co-located at the Exchange's Mahwah, New Jersey facility offering a similar competing product would similarly need to obtain the six underlying data feeds.

The Exchange has designed the NYSE BQT data feed so that it would not have a competitive advantage over a competing vendor with respect to the speed of access to those six underlying data feeds. Likewise, the NYSE BQT data feed would not have a speed advantage vis-à-vis competing vendors co-located in the data center with respect to access to end user customers, whether those end users are also co-located or not. As such, a market data vendor could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level-playing field with respect to the speed that the Exchange could create and redistribute the NYSE BQT data feed.

With respect to cost, the Exchange will file a separate rule filing to establish the fees for NYSE BQT. To ensure that vendors could compete with the Exchange by creating the same product as NYSE BQT and sell it to their clients, the Exchange would charge its clients for the NYSE BQT feed an amount that represents the cost to a market data vendor to obtain the six underlying data feeds, plus $1,000 per month to reflect both the value of the aggregation and consolidation function. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location costs to a particular vendor may be inconsequential if such vendor is already co-located and is able to allocate

[13] *See* NASDAQ Basic, Doing More with Less, available at *http://www.brainshark.com/nasdaqomx/vu?pi=zG8z33O6ozAgBpz0&tx=preview&preview=1* and *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic#vendors.*

[14] *See* NLS Product page, *available at http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus.* BATS Exchange, Inc. has announced its intention to offer the BATS One Feed, which will deliver aggregated quote, trade, and optional depth information for all four U.S. equity exchanges operated by BATS, as of August 1, 2014, *available at http://cdn.batstrading.com/resources/market_data/products/bats_bats-one-feed.pdf.*

[15] *See http://cdn.batstrading.com/resources/press_releases/BATS-One-Announcement-FINAL.pdf.* BATS has also submitted rule filings on behalf it its four exchanges to the Commission on the basis that its proposed unified feed is a proprietary market data product. *See also* SR–BATS–2014–028, SR–BYX–2014–011, SR–EDGA–2014–16, and SR–EDGX–2014–19.

[16] 15 U.S.C. 78f(b)(8).

its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a competing vendor could create and offer a product similar to the proposed NYSE BQT data feed at a similar cost. For these reasons, the Exchange believes that vendors could readily offer a product similar to NYSE BQT on a competitive basis.

The Exchange further believes that NYSE BQT will promote competition among exchanges by offering an alternative to NASDAQ Basic and NLS Plus, which are already offered by NASDAQ. As noted above, seven vendors are already offering and more than 1,000 firms are already subscribing to NASDAQ Basic, including 9 of the 10 largest banks.[17] BATS also has announced that it intends to offer a market data product that is similar to the NASDAQ products and NYSE BQT.[18] For these reasons, the Exchange believes that offering NYSE BQT will promote, rather than unnecessarily or inappropriately burden, competition for market data products that are offered in the capacity as a vendor and are not core exchange market data products.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (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 Exchange consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–40 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–40. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–40 and should be submitted on or before August 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18747 Filed 8–7–14; 8:45 am]

**BILLING CODE 8011–01–P**

[17] *See supra* note 12.

[18] *See http://cdn.batstrading.com/resources/press_releases/BATS-One-Announcement-FINAL.pdf,* supra note 15.

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**File No. 500–1**

### In the Matter of Amico Games Corp., Andina Group Inc., Cougar Oil & Gas Canada Inc., Encorium Group, Inc., and Waccamaw Bankshares, Inc., Order of Suspension of Trading

August 6, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amico Games Corp. because it has not filed any periodic reports since the period ended May 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Andina Group Inc. because it has not filed any periodic reports since the period ended March 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cougar Oil & Gas Canada Inc. because it has not filed any periodic reports since the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Encorium Group, Inc. because it has not filed any periodic reports since the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Waccamaw Bankshares, Inc. because it has not filed any periodic reports since the period ended December 31, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 6, 2014, through 11:59 p.m. EDT on August 19, 2014.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18914 Filed 8–6–14; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Datascension, Inc., Here Enterprises, Inc., Metaswarm, Inc., and Statmon Technologies Corp.; Order of Suspension of Trading

August 6, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Datascension, Inc. because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Here Enterprises, Inc. because it has not filed any periodic reports since the period ended February 29, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Metaswarm, Inc. because it has not filed any periodic reports since it filed a Form 10–12G to register its common stock, which included financial statements through the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Statmon Technologies Corp. because it has not filed any periodic reports since the period ended December 31, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 6, 2014, through 11:59 p.m. EDT on August 19, 2014.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18916 Filed 8–6–14; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Conquest Petroleum Inc. and Nexaira Wireless Inc.; Order of Suspension of Trading

August 6, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Conquest Petroleum Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nexaira Wireless Inc. because it has not filed any periodic reports since the period ended July 31, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 6, 2014, through 11:59 p.m. EDT on August 19, 2014.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–18915 Filed 8–6–14; 11:15 am]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2014–0028]**

### Supplementary Agreement on Social Security Between the United States and the Swiss Confederation; Entry Into Force

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice.

**SUMMARY:** We are giving notice that on August 1, 2014, a new agreement will enter into force that replaces the original U.S.-Swiss Social Security agreement that has been in effect since November 1, 1980. The new agreement, which was signed on December 3, 2012, was concluded pursuant to section 233 of the Social Security Act.

The new agreement updates and clarifies several provisions in the original U.S.-Swiss Social Security agreement. The primary purpose, however, is to correct an anomalous situation, caused by a change in Swiss law, in which the original agreement allowed U.S. nationals to receive certain disability benefits from Switzerland on more favorable terms than Swiss nationals. Additionally, the new agreement provides that under certain conditions less restrictive than those of the original agreement. U.S. nationals may qualify for Swiss flat-rate, needs-based benefits. The new agreement also introduces new and enhanced provisions for the protection and integrity of personal data transmitted under the agreement.

Individuals who wish to obtain copies of the new agreement or want general information about its provisions may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, Maryland 21235–7741. The Social Security Web site at *http://www.socialsecurity.gov/international* also includes the text of the new agreement. Anyone who wants information about the Swiss Social Security programs may write to the Swiss Compensation Office, 18 Avenue Ed. Vaucher, CH–1211 Geneva 28, Switzerland.

Dated: August 1, 2014.

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

[FR Doc. 2014–18826 Filed 8–7–14; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 8812]**

### In the Matter of the Review and Amendment of the Designation of Harakat ul-Mujahidin; aka Harakat ul-Mujahideen; aka Harakat ul-Ansar; aka Jamiat ul-Ansar; aka HUA; aka HUM; aka al-Hadid; aka al-Hadith; aka al-Faran; as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter pursuant to Section 219(a)(4)(C) and (b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C), (b)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State concludes that the circumstances that were the basis for the 2008 decision to maintain the designation of the aforementioned organization as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not

warrant a revocation of the designation of Harakat ul-Mujahidin, and that there is a sufficient factual basis to find that Harakat ul-Mujahidin, also known under the aliases listed above, uses or has used additional aliases, namely, Ansar ul-Ummah.

Therefore, the Secretary of State hereby determines that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained. In addition, effective upon the date of publication in the **Federal Register**, the Secretary of State hereby amends the 2008 review of Harakat ul-Mujahidin as a foreign terrorist organization, pursuant to § 219(b) of the INA (8 U.S.C. 1189(b)), to include the following new alias and other possible transliterations thereof:

Ansar ul-Ummah

Dated: July 23, 2014.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2014–18802 Filed 8–7–14; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice: 8813]**

### In the Matter of the Amendment of the Designation of Harakat ul-Mujahidin, aka Harakat ul-Mujahideen, aka Harakat ul-Ansar, aka Jamiat ul-Ansar, aka HUA, aka HUM, aka al-Hadid, aka al-Hadith, aka al-Faran as a Specially Designated Global Terrorist Entity Pursuant to Executive Order 13224

Based upon a review of the Administrative Record assembled in this matter pursuant to Executive Order 13224 and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State concludes that there is a sufficient factual basis to find that Harakat ul-Mujahidin, also known under the aliases listed above, uses or has used additional aliases, namely, Ansar ul-Ummah.

Therefore, the Secretary of State hereby amends the designation of Harakat ul-Mujahidin as a Specially Designated Global Terrorist entity, pursuant to Executive Order 13224, to include the following new aliases and other possible transliterations thereof:

Ansar ul-Ummah.

Dated: July 23, 2014.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2014–18800 Filed 8–7–14; 8:45 am]

**BILLING CODE 4710–10–P**

## STATE JUSTICE INSTITUTE

### SJI Board of Directors Meeting, Notice

**AGENCY:** State Justice Institute.

**ACTION:** Notice of Meeting.

**SUMMARY:** The SJI Board of Directors will be meeting on Friday, September 5, 2014 at 1:00 p.m. The meeting will be held at the Supreme Court of Arkansas in Little Rock, Arkansas. The purpose of this meeting is to consider grant applications for the 4th quarter of FY 2014, and other business. All portions of this meeting are open to the public.

**ADDRESSES:** Supreme Court of Arkansas, 625 Marshall Street, Little Rock, Arkansas, 72201.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov*.

**Jonathan D. Mattiello,**

*Executive Director.*

[FR Doc. 2014–18786 Filed 8–7–14; 8:45 am]

**BILLING CODE 6820–SC–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2014–51]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before August 28, 2014.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2014–0481 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jake Troutman, (202) 267–9521, 800 Independence Avenue SW., Washington, DC, 20951.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 4, 2014.

**Lirio Liu,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2014–0481.

*Petitioner:* Trudeau, Douglas.

Section of 14 CFR 45.23(b), 61.113(a) and (b), 91.7(a), 91.9(b)(2), 91.103(b), 91.109, 91.119, 91.121, 91.151(a), 91.203(a) and (b), 91.405(a), 91.407(a)(1), 91.409(a)(2), and 91.417(a) and (b).

Description of Relief Sought: The petitioner is seeking an exemption to commercially operate his small ultra light weight UAS for academic community awareness, real estate operations, enhancement of real estate listing videos for homeowners that cannot afford expensive manned aircraft for the same purpose, and to benefit/

stimulate attraction to the metro Tucson area.

[FR Doc. 2014–18755 Filed 8–7–14; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Voluntary Intermodal Sealift Agreement Open Season

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of open season for enrollment in the VISA program.

**SUMMARY:** The Maritime Administration (MARAD) announces that the open season for Fiscal Year 2015 applications for participation in the Voluntary Intermodal Sealift Agreement (VISA) program will run for 30 days beginning today and ending September 8, 2014. The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to apply. This is the only planned enrollment period for carriers to join the VISA program and derive benefits for Department of Defense (DOD) peacetime contracts initiated during the period from October 1, 2014, through September 30, 2015.

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program.

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies. Carriers enrolled in the VISA program provide DOD with assured access to such services during contingencies. In return for their VISA commitment, DOD gives VISA participants priority for peacetime cargos.

**DATES:** VISA Program applications must be received on or before September 8, 2014.

**ADDRESSES:** Submit applications and questions related to this notice to Jerome D. Davis, Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone (202) 366–0688; Fax (202) 366–5904.

**FOR FURTHER INFORMATION CONTACT:** Jerome D. Davis, Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone (202) 366–0688; Fax (202) 366–5904, or visit *http://www.marad.dot.gov.*

**SUPPLEMENTARY INFORMATION:** The VISA program was established pursuant to Section 708 of the Defense Production Act of 1950, as amended (DPA). The VISA program was created to provide for voluntary agreements for emergency preparedness programs. Pursuant to the DPA, voluntary agreements for preparedness programs, including the VISA program expire five (5) years after the date they became effective.

The VISA program is open to U.S.-flag vessel operators of oceangoing militarily useful vessels, to include tugs and barges. An operator is defined as an owner or bareboat charterer of a vessel. Tug enrollment alone does not satisfy VISA eligibility. Operators include vessel owners and bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to VISA. Voyage and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

#### VISA Concept

The VISA program provides for the staged, time-phased availability of participants' shipping services/systems through pre-negotiated contracts between the Government and participants. Such arrangements are jointly planned with the MARAD, USTRANSCOM, and participants in peacetime to allow effective and best valued use of commercial sealift capacity, provide DOD assured contingency access, and to minimize commercial disruption.

There are three time-phased stages in the event of VISA activation. VISA Stages I and II provide for pre-negotiated contracts between DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA Stage III provides for additional capacity to DOD when Stages I and II commitments or volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DOD contracting practices or U.S. Government treaty agreements.

#### Exceptions to This Open Season

The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

#### Advantages of Peacetime Participation

In return for their VISA commitment, DOD awards peacetime cargo contracts to VISA participants on a priority basis. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities: U.S.-flag vessel capacity operated by VISA participants and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants; U.S.-flag vessel capacity operated by non-participants; Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants; Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants; U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants; U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants; and Foreign-owned or operated foreign-flag vessel capacity of non-participants.

#### Participation

Applicants must provide satisfactory evidence that the vessels being committed to the VISA program are operational and are intended to be operated by the applicant in the carriage of commercial or government preference cargoes. Operator is defined as an ocean common carrier or contract carrier that owns, controls or manages vessels by which ocean transportation is provided. While vessel brokers, freight forwarders, and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they are not eligible to participate in the VISA program due to lack of requisite vessel ownership or operation.

#### Commitment

Any U.S.-flag vessel operator desiring to receive priority consideration for DOD peacetime contracts must commit no less than 50 percent of its total U.S.-flag militarily useful capacity in Stage III of the VISA program. Participants operating vessels in international trade may receive top tier consideration in the award of DOD peacetime contracts by

committing the minimum percentages of capacity to all three stages of VISA or bottom tier consideration by committing the minimum percentage of capacity to only Stage III of VISA. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic Jones Act trades are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCAs) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCAs must be submitted to the MARAD for coordination with the Department of Justice for approval, before they can be utilized.

**Vessel Position Reporting**

If VISA applicants have the capability to track their vessels, they must include the tracking system used in their VISA application. Such applicants are required to provide MARAD access to their vessel tracking systems upon approval of their VISA application. If VISA applicants do not have a tracking system, they must indicate this in their VISA application. The VISA program requires enrolled ships to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

**Compensation**

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation for that capacity activated under Stage I, II and III. The amount of compensation will depend on the Stage at which capacity is activated. During enrollment, each participant must select a rate methodology for compensation. The compensation methodology selection will be completed with USTRANSCOM, resulting in prices in contingency contracts between USTRANSCOM and the participant.

**Security Clearances**

All VISA applicants accepted for VISA participation, not having a Facility Security Clearance (FCL), will be required to pursue the clearance process with the Defense Security Service (DSS). If the accepted applicant does not have a clearance, MARAD will initiate the clearance process with DSS. Participants must have a FCL and individual security clearances, at a minimum of SECRET level, for key personnel in order for them to participate in the VISA Joint Planning Advisory Group (JPAG) meetings and to meet VISA contingency contract obligations. One of the objectives of the JPAG is to provide the USTRANSCOM, MARAD and VISA participants a planning forum to analyze DOD contingency sealift/intermodal service and resource requirements against industry commitments. JPAG meetings are often SECRET classified sessions. Eligibility for VISA participation will be terminated if an applicant is rejected for a facility clearance or if it fails to progress in a timely manner in the clearance process.

**Application for VISA Participation**

New applicants may apply to participate by obtaining a VISA application package (Form MA–1020 (OMB Approval No. 2133–0532)) from the Director, Office of Sealift Support. Form MA–1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the VISA document as published in the **Federal Register** on March 24, 2010, will also be provided with the package. This information is needed in order to assist MARAD in making a determination of the applicant's eligibility. An applicant company must provide an affidavit that demonstrates that the company is qualified to document a vessel under 46 U.S.C. § 12103, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to the VISA program.

New VISA applicants are required to submit their applications for the VISA program as described in this Notice no later than 30 days after the date of publication of this **Federal Register** notice. Applicants must provide the following: U.S. citizenship documentation; Copy of their Articles of Incorporation and/or By Laws; Copies of loadline documents from a recognized classification society to validate oceangoing vessel capability; U.S. Coast Guard Certificates of Documentation for all vessels in their fleet; Copy of Bareboat Charters, if applicable, valid through the period of enrollment, which state that the owner will not interfere with the charterer's obligation to commit chartered vessel(s) to the VISA program for the duration of the charter; and Copy of Time Charters, valid through the period of enrollment, for tug services to barge operators, if sufficient tug service is not owned or bareboat chartered by the VISA applicant. Barge operators must provide evidence to MARAD that tug service of sufficient horsepower will be available for all barges enrolled in the VISA program.

Approved VISA participants will be responsible for ensuring that information submitted with their application remains up to date beyond the approval process. Any changes to VISA commitments must be reported to MARAD and USTRANSCOM not later than seven days prior to the change. If charter agreements are due to expire, participants must provide MARAD with charters that extend the charter duration for another 12 months or longer.

Once MARAD has reviewed the application and determined VISA eligibility, MARAD will sign the VISA application document which completes the eligibility phase of the VISA enrollment process.

After VISA eligibility is approved by MARAD, approved applicants are required to execute a VISA contingency contract with USTRANSCOM. The USTRANSCOM VISA contract will specify the following: Participant's Stage III commitment, and appropriate Stage I and/or II commitments for the period October 1, 2014 through September 30, 2015; Drytime Contingency terms and conditions; and Liner Contingency terms and conditions, if applicable.

Execution of the USTRANSCOM VISA contract completes the enrollment process and establishes the approved applicant as a VISA Participant. The Maritime Administration reserves the right to revalidate all eligibility requirements without notice. USTRANSCOM reserves the right to revalidate eligibility for VISA priority for DOD business at any time without notice.

**Authority:** 49 CFR Sections 1.92 and 1.93

By Order of the Maritime Administrator.

Dated: August 4, 2014.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2014–18812 Filed 8–7–14; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### Funding Opportunity Title: Notice of Allocation Availability (NOAA); Inviting Applications for the Calendar Year (CY) 2014 Allocation Round of the New Markets Tax Credit (NMTC) Program

*Announcement Type:* Announcement of NMTC allocation availability.

**DATES:** Electronic applications must be received by 5:00 p.m. ET on October 1, 2014. Applications sent by mail, facsimile or other form will not be accepted. Please note the Community Development Financial Institutions Fund (CDFI Fund) will only accept applications and attachments (i.e., the CDE's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) in electronic form (see Section IV.D. of this NOAA for more details). Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOAA. NMTC allocation Applicants that are not yet certified as Community Development Entities (CDEs) must submit an application for CDE certification that is postmarked on or before August 22, 2014 (see Section III of this NOAA for more details).

*Executive Summary:* This NOAA is issued in connection with the CY 2014 allocation round (Allocation Round) of the New Markets Tax Credit (NMTC) Program, as initially authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554) and amended by section 221 of the American Jobs Creation Act of 2004 (Pub. L. 108–357), section 101 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 108–357), Division A, section 102 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432), section 733 of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (Pub. L. 111–312), and the American Taxpayer Relief Act of 2012 (the Act). Through the NMTC Program, the CDFI Fund provides authority to CDEs to offer an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in Low-Income Communities. Through this NOAA, the CDFI Fund announces the availability of up to $5.0 billion of NMTC investment authority, subject to Congressional authorization.

In this NOAA, the CDFI Fund specifically addresses how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

### I. Allocation Availability Description

*A. Programmatic Changes From CY 2013 Allocation Round*

1. *Allocation amounts:* As described in Section IIA, the CDFI Fund anticipates that it will provide NMTC allocation awards for not more than $125 million of allocation per Allocatee.

2. *Prior QEI Issuance Requirements:* In order to be eligible to apply for NMTC allocations in this Allocation Round, as described in Section III.A.2(a), Applicants that have received NMTC allocation awards in previous rounds are required to meet minimum Qualified Equity Investment (QEI) issuance thresholds with respect to their prior-year allocations. These thresholds and deadlines have been revised in comparison to the CY 2013 NOAA.

B. *Program guidance and regulations:* This NOAA provides guidance for the application and allocation of NMTCs for this Allocation Round of the NMTC Program and should be read in conjunction with: (i) Guidance published by the CDFI Fund on how an entity may apply to become certified as a CDE (66 **Federal Register** 65806, December 20, 2001); (ii) the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published on December 28, 2004), as amended and related guidance, notices and other publications; and (iii) the application and related materials for this Allocation Round. All such materials may be found on the CDFI Fund's Web site at *http://www.cdfifund.gov*. The CDFI Fund encourages Applicants to review these documents. Capitalized terms used, but not defined, in this NOAA shall have the respective meanings assigned to them in the allocation application, IRC § 45D or the IRS regulations. In the event of any inconsistency between the allocation application, IRC § 45D or the IRS regulations, the provisions of IRC § 45D and the IRS regulations shall govern.

### II. Allocation Information

A. *Allocation amounts:* Pursuant to the Act, the CDFI Fund expects that it may allocate to CDEs the authority to issue to their investors up to the aggregate amount of $5.0 billion in equity as to which NMTCs may be claimed, as permitted under IRC § 45D(f)(1)(D). Pursuant to this NOAA, the CDFI Fund anticipates that it will not issue more than $125 million in tax credit investment authority per Allocatee. The CDFI Fund, in its sole discretion, reserves the right to allocate amounts in excess of or less than the anticipated maximum allocation amount should the CDFI Fund deem it appropriate. In order to receive an allocation in excess of the $125 million cap, an Applicant, at a minimum, will need to demonstrate that: (i) No part of its strategy can be successfully implemented without an allocation in excess of the applicable cap; and/or (ii) its strategy will produce extraordinary community outcomes. The CDFI Fund reserves the right to allocate NMTC authority to any, all, or none of the entities that submit an application in response to this NOAA, and in any amount it deems appropriate.

B. *Types of awards:* NMTC Program awards are made in the form of allocations of tax credit investment authority.

C. *Allocation Agreement:* Each Allocatee under this NOAA must sign an Allocation Agreement, which must be countersigned by the CDFI Fund, before the NMTC allocation is effective. The Allocation Agreement contains the terms and conditions of the allocation. For further information, see Section VI of this NOAA.

### III. Eligibility

A. *Eligible Applicants:* IRC § 45D specifies certain eligibility requirements that each Applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA for the available NMTC investment authority.

1. *CDE certification:* For purposes of this NOAA, the CDFI Fund will not consider an application for an allocation of NMTCs unless: (a) The Applicant is certified as a CDE at the time the CDFI Fund receives its NMTC Program allocation application; or (b) the Applicant submits an application for certification as a CDE that is Postmarked on or before August 22, 2014. Applicants for certification may obtain a CDE certification application through the CDFI Fund's Web site at *http://www.cdfifund.gov*. Applications for CDE certification must be submitted as instructed in the application form. An Applicant that is a Community Development Financial Institution (CDFI) or a Specialized Small Business Investment Company (SSBIC) does not need to submit a CDE certification

application; however, it must register as a CDE on the CDFI Fund's Web site on or before 5:00 p.m. ET on August 22, 2014. See Section IV.D.1(b) of this NOAA for further requirements relating to Postmarks.

The CDFI Fund will not provide NMTC allocation authority to Applicants that are not certified as CDEs or to entities that are certified as Subsidiary CDEs.

If an Applicant that has already been certified as a CDE wishes to change its designated CDE service area, it must submit its request for such change to the CDFI Fund, and the request must be received by the CDFI Fund by 5:00 p.m. ET on August 22, 2014. The CDE service area change request must be sent from the Applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from Low-Income Communities in the revised service area. The service area change request must be sent by email to *ccme@cdfi.treas.gov.*

2. *Prior awardees or Allocatees:* Applicants must be aware that success in a prior application or allocation round of any of the CDFI Fund's programs is not indicative of success under this NOAA. For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that meets the definition of Affiliate as defined in the NMTC allocation application materials, or any entity otherwise identified as an Affiliate by the Applicant in its NMTC allocation application materials. Prior awardees of any CDFI Fund program are eligible to apply under this NOAA, except as follows:

(a) *Prior Allocatees and Qualified Equity Investment (QEI) issuance requirements:* The following describes the QEI issuance requirements applicable to prior Allocatees.

An Allocatee in the CY 2009 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 30, 2015, it has finalized at least 95 percent of its QEIs relating to its CY 2009 NMTC allocation.

An Allocatee in the CY 2010 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 30, 2015, it has: (i) Finalized at least 80 percent of its QEIs relating to its CY 2010 NMTC allocation; or (ii) it has finalized at least 70 percent of its QEIs and that at least 100 percent of its total CY 2010 NMTC allocation has been finalized, or has been committed by its investors.

An Allocatee in the CY 2011 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 30, 2015, it has: (i) Finalized at least 70 percent of its QEIs relating to its CY 2011 NMTC allocation; or (ii) it has finalized at least 60 percent of its QEIs and that at least 80 percent of its total CY 2011 NMTC allocation has been finalized, or has been committed by its investors.

An Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2012 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 30, 2015, it has: (i) Finalized at least 50 percent of its QEIs relating to its CY 2012 NMTC allocation; or (ii) it has finalized at least 40 percent of its QEIs and that at least 60 percent of its total CY 2012 NMTC allocation has been finalized, or has been committed by its investors. A prior Rural CDE Allocatee in the CY 2012 is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee can demonstrate that, as of 11:59 p.m. ET on January 30, 2015, it has finalized at least 30 percent of its CY 2012 NMTC Allocation.

An Allocatee (with the exception of a Rural CDE Allocatee) in the CY 2013 allocation round of the NMTC Program is not eligible to receive a NMTC allocation pursuant to this NOAA unless the Allocatee is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 30, 2015, it has: (i) Finalized at least 30 percent of its QEIs relating to its CY 2013 NMTC allocation; or (ii) finalized at least 20 percent of its QEIs and that at least 50 percent of its total CY 2013 NMTC allocation has been finalized, or has been committed by its investors. A Rural CDE is not required to meet the above QEI issuance and commitment thresholds with regard to its CY 2013 NMTC allocation award.

In addition to the requirements described above, an entity is not eligible to receive a NMTC allocation pursuant to this NOAA if an Affiliate of the Applicant is a prior Allocatee and has not met the requirements for the issuance and/or commitment of QEIs as set forth above for the Allocatees in the prior allocation rounds of the NMTC Program.

Notwithstanding the above, if an Applicant has received multiple NMTC allocation awards between CY 2009 and CY 2013, the Applicant shall be deemed to be eligible to apply for a NMTC allocation pursuant to this NOAA if the Applicant is able to affirmatively demonstrate that, as of 11:59 p.m. ET on January 30, 2015, it has finalized at least 90 percent of its QEIs relating to its cumulative allocation amounts from these prior NMTC Program rounds. Rural CDEs that received allocations under the CY 2012 allocation round may choose to exclude such allocations from this cumulative calculation, provided that the Allocatee has finalized at least 20 percent of its QEIs relating to its CY 2012 allocation. Rural CDEs that received allocations under the CY 2013 allocation round may choose to exclude such allocation from this cumulative calculation.

For purposes of this section of the NOAA, the CDFI Fund will only recognize as ''finalized'' those QEIs that have been properly reported in the CDFI Fund's Allocation Tracking System (ATS) by the deadlines specified above. Allocatees and their Subsidiary Allocatees, if any, are advised to access ATS to record each QEI that they issue to an investor in exchange for funds in-hand. For purposes of this section of the NOAA, ''committed'' QEIs are only those Equity Investments that are evidenced by a written, signed document in which an investor: (i) Commits to make a QEI in the Allocatee in a specified amount and on specified terms; (ii) has made an initial disbursement of the investment proceeds to the Allocatee, and such initial disbursement has been recorded in ATS as a QEI; (iii) commits to disburse the remaining investment proceeds to the Allocatee based on specified amounts and payment dates; and (iv) commits to make the final disbursement to the Allocatee no later than January 30, 2017.

The Applicant will be required, upon notification from the CDFI Fund, to submit adequate documentation to substantiate the required issuances of and commitments for QEIs.

Applicants should be aware that these QEI issuance requirements represent the minimum threshold requirements that must be met in order to submit an application for assistance under this NOAA. As stated in Section V.B.2 of this NOAA, the CDFI Fund reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process—including an Applicant's track record of raising QEIs and/or deploying its Qualified Low

Income Community Investments (QLICIs).

Prior Allocatees that require any action by the CDFI Fund (i.e., certifying a subsidiary entity as a CDE; adding a subsidiary CDE to an Allocation Agreement; etc.) in order to meet the QEI issuance requirements above must submit their Certification Application for subsidiary CDEs by no later than October 1, 2014 and Allocation Agreement Amendment requests by no later than November 1, 2014 in order to guarantee that the CDFI Fund completes all necessary approvals prior to January 30, 2015. Applicants for certification may obtain a CDE certification application through the CDFI Fund's Web site at *http://www.cdfifund.gov*. Applications for CDE certification must be submitted as instructed in the application form.

(b) *Pending determination of noncompliance or default:* If an Applicant is a prior awardee or Allocatee under any CDFI Fund program and if: (i) It has submitted reports to the CDFI Fund that demonstrate potential noncompliance with or default under a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance or default of its previous assistance, award or Allocation Agreement, the CDFI Fund will consider the Applicant's application under this NOAA pending final determination of whether the entity is in noncompliance or default, in the sole determination of the CDFI Fund. Further, if an Affiliate of the Applicant is a prior CDFI Fund awardee or Allocatee and if such entity: (i) Has submitted reports to the CDFI Fund that demonstrate potential noncompliance with or default under a previous assistance, award or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance or default of its previous assistance, award or Allocation Agreement, the CDFI Fund will consider the Applicant's application under this NOAA pending final determination of whether the entity is in noncompliance or default, in the sole determination of the CDFI Fund.

Notwithstanding the above, any Applicant or Affiliate that is in default under Section 3.2 of its previously executed Allocation Agreement is deemed ineligible under this NOAA if: (i) The CDFI Fund has made a determination that such Applicant is in default under Section 3.2 of a previously executed Allocation Agreement and (ii) the CDFI Fund has provided written notification of such determination to the Applicant. Moreover, any Applicant that is otherwise eligible as of the application deadline must continue to be compliant with Section 3.2 of its Allocation Agreement(s) after the application deadline, in order for the CDFI Fund to continue evaluating its application. If an Applicant fails to do such, the CDFI Fund will no longer deem the Applicant eligible.

(c) *Default status:* The CDFI Fund will not consider an application submitted by an Applicant that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a determination that such Applicant is in default of a previously executed assistance, allocation, or award agreement; (ii) the CDFI Fund has provided written notification of such determination to the Applicant; and (iii) the application deadline of the NOAA is within a period of time specified in a notification to the prior CDFI Fund awardee or Allocatee for which any new application from the Applicant to the CDFI Fund for an award, allocation, or assistance is prohibited.

Further, the CDFI Fund will not consider an application submitted by an Applicant for which there is an Affiliate that is a prior awardee or Allocatee under any CDFI Fund Program if, as of the application deadline of this NOAA: (i) The CDFI Fund has made a determination that such Affiliate is in default of a previously executed assistance, allocation, or award agreement; (ii) the CDFI Fund has provided written notification of such determination to the Affiliate; and (iii) the application deadline of the NOAA is within a period of time specified in a notification to the prior CDFI Fund awardee or Allocatee for which any new application from the Affiliate to the CDFI Fund for an award, allocation, or assistance is prohibited.

(d) *Undisbursed award funds:* The CDFI Fund will not consider an application submitted by an Applicant that is a prior awardee under the CDFI Program (CDFI), Native Initiatives (NI), and Bank Enterprise Award (BEA) Program if the Applicant has a balance of undisbursed award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOAA. Furthermore, an entity is not eligible to apply for an award pursuant to this NOAA if an Affiliate of the Applicant is a prior awardee under any CDFI Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOAA. In a case where an Affiliate of the Applicant is a prior awardee under any CDFI Fund program and has a balance of undisbursed award funds under said prior award(s) as of the applicable application deadline of this NOAA, the CDFI Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed award funds.

For purposes of the calculation of undisbursed award funds for the BEA Program, only awards made to the Applicant (and any Affiliates) three to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included (''includable BEA awards''). Thus, for purposes of this NOAA, undisbursed BEA Program award funds are the amount of FYs 2009, 2010, 2011 awards that remain undisbursed as of the application deadline of this NOAA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the NI, only awards made to the Applicant (and any entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant, as determined by the CDFI Fund) two to five calendar years prior to the end of the calendar year of the application deadline of this NOAA are included (''includable CDFI/NI awards''). Thus, for purposes of this NOAA, undisbursed CDFI Program and NI awards are the amount of FYs 2009, 2010, 2011 and 2012 awards that remain undisbursed as of the application deadline of this NOAA.

To calculate total includable BEA/CDFI/NI awards: Amounts that are undisbursed as of the application deadline of this NOAA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation in the Round Allocation Application Q&A document, available on the CDFI Fund's Web site.

The ''undisbursed award funds'' calculation does not include: (i) NMTC allocation authority; (ii) any award funds for which the CDFI Fund received a full and complete disbursement request from the awardee by the applicable application deadline of this NOAA; (iii) any award funds for an award that has been terminated, in writing, by the CDFI Fund or de-obligated by the CDFI Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The CDFI Fund strongly encourages Applicants requesting disbursements of ''undisbursed funds'' from prior awards to provide the CDFI Fund with a

complete disbursement request at least 30 business days prior to the application deadline of this NOAA.

(e) *Contact the CDFI Fund:* Accordingly, Applicants that are prior awardees and/or Allocatees under any other CDFI Fund program are advised to: (i) Comply with the requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the CDFI Fund as necessary to ensure that all required actions are underway for the disbursement of any outstanding balance of a prior award(s). All outstanding reports and compliance questions should be directed to the Office of Certification, Compliance Monitoring, and Evaluation by email at *ccme@cdfi.treas.gov or* by telephone at (202) 653–0423. All disbursement questions related to the CDFI and NACA Programs should be directed to the CDFI Fund Help Desk by telephone (202) 653–0421 (Option 1 for CDFI Program, Option 2 for the NACA Program) or via email at *cdfihelp@cdfi.treas.gov*. All disbursement questions related to the BEA Program should be directed to David Fleites, Policy and Program Officer by telephone at (202) 653–0355 or via email at *fleitesd@cdfi.treas.gov*. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

The CDFI Fund will respond to Applicants' reporting, compliance or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of publication of this NOAA through September 29, 2014 (two days before the application deadline). The CDFI Fund will not respond to Applicants' reporting, compliance, CDE certification, or disbursement phone calls or email inquiries that are received after 5:00 p.m. ET on September 29, 2014 until after the funding application deadline of October 1, 2014.

3. *Failure to accurately respond to a question in the Assurances and Certifications section of the application and submit the required written explanation:* In its sole discretion, the CDFI Fund may deem the Applicant's application ineligible, if the CDFI Fund determines that the Applicant inaccurately responded to a question and failed to submit a required written explanation, or accurately answered a question yet failed to submit a required written explanation, with respect to the application Assurances and Certifications. In making this determination, the CDFI Fund will take into consideration, among other factors, the materiality of the question, the substance of any supplemental responses provided, and whether the information in the Applicant's supplemental responses will have a material adverse effect on the Applicant, its financial condition or its ability to perform under an allocation agreement, should the Applicant receive an allocation.

4. *Entities that propose to transfer NMTCs to Subsidiaries:* Both for-profit and non-profit CDEs may apply for NMTC allocation authority, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit Applicant wishing to apply for a NMTC allocation must demonstrate, prior to entering into an Allocation Agreement with the CDFI Fund, that: (i) It controls one or more Subsidiaries that are for-profit entities; and (ii) it intends to transfer the full amount of any NMTC allocation it receives to said Subsidiary.

An Applicant wishing to transfer all or a portion of its NMTC allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the CDFI Fund. However, the Subsidiary entities must be certified as CDEs by the CDFI Fund, and enjoined as parties to the Allocation Agreement at closing or by amendment to the Allocation Agreement after closing. Before the NMTC allocation transfer may occur it must be pre-approved by the CDFI Fund, in its sole discretion.

The CDFI Fund strongly encourages a non-profit Applicant to submit a CDE certification application to the CDFI Fund on behalf of at least one Subsidiary within 60 days after the non-profit Applicant receives the Notice of Allocation (NOA) from the CDFI Fund, as such Subsidiary must be certified as a CDE prior to entering into an Allocation Agreement with the CDFI Fund. A non-profit Applicant that does not already have a certified for-profit Subsidiary and that fails to submit a certification application for one or more for-profit Subsidiaries within 60 days of the date of the NOA from the CDFI Fund is subject to the CDFI Fund rescinding the award.

5. *Entities that submit applications together with Affiliates; applications from common enterprises:* (a) As part of the allocation application review process, the CDFI Fund considers whether Applicants are Affiliates, as such term is defined in the allocation application. If an Applicant and its Affiliates wish to submit allocation applications, they must do so collectively, in one application; an Applicant and its Affiliates may not submit separate allocation applications. If Affiliated entities submit multiple applications, the CDFI Fund reserves the right either to reject all such applications received or to select a single application as the only application considered for an allocation. In the case of governmental entities, the CDFI Fund may accept applications submitted by Affiliated entities, but only to the extent the CDFI Fund determines that the business strategies and/or activities described in such applications, submitted by separate entities, are distinctly dissimilar and are operated and/or managed by distinctly dissimilar boards and staff, including identified consultants. In such cases, the CDFI Fund reserves the right to limit award amounts to such entities to ensure that the entities do not collectively receive more than the $125 million cap.

For purposes of this NOAA, in addition to assessing whether Applicants meet the definition of the term ''Affiliate'' found in the allocation application, the CDFI Fund will consider: (i) Whether the activities described in applications submitted by separate entities are, or will be, operated and/or managed as a common enterprise that, in fact or effect, may be viewed as a single entity; (ii) whether the applications submitted by separate entities contain significant narrative, textual or other similarities, and (iii) whether the business strategies and/or activities described in applications submitted by separate entities are so closely related, in fact or effect, they may be viewed as substantially identical applications. In such cases, the CDFI Fund reserves the right either to reject all applications received from all such entities; to select a single application as the only one that will be considered for an allocation; and, in the event that an Application is selected to receive an allocation award, to deem certain activities ineligible. These requirements shall apply to all Applicants, including those that are Affiliated with governmental entities.

(b) Furthermore, an Applicant that receives an allocation in this Allocation Round (or its Subsidiary transferee) may not become an Affiliate of or member of a common enterprise (as defined above) with another Applicant that receives an allocation in this Allocation Round (or its Subsidiary transferee) at any time after the submission of an allocation application under this NOAA. This prohibition, however, generally does not apply to entities that are commonly controlled solely because of common ownership by QEI investors. This requirement will also be a term and condition of the Allocation Agreement (see Section VI.B of this NOAA and additional application guidance materials on the CDFI Fund's Web site

at *http://www.cdfifund.gov* for more details).

6. *Entities created as a series of funds:* An Applicant whose business structure consists of an entity with a series of funds must apply for CDE certification for each fund. If such an Applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an Applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it must submit a CDE certification application for the Applicant and each fund it would like to participate in the NMTC Program, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an Applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds is classified as a single partnership or corporation or as multiple partnerships or corporations, an Applicant may not transfer any NMTC allocations it receives to one or more of its funds unless the fund is a certified CDE that is a Subsidiary of the Applicant, enjoined to the Allocation Agreement as a Subsidiary Allocatee.

7. *Entities that are BEA Program awardees:* An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC allocation for the same investment in a CDE.

## IV. Application and Submission Information

A. *Address to request application package:* Applicants must submit applications electronically under this NOAA, through the CDFI Fund Web site. Following the publication of this NOAA, the CDFI Fund will make the electronic allocation application available on its Web site at *http://www.cdfifund.gov.* Applications sent by mail, facsimile or other form will not be accepted. Please note the CDFI Fund will only accept the application and attachments (i.e., the Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) in electronic form.

B. *Application content requirements:* Detailed application content requirements are found in the application related to this NOAA. Applicants must submit all materials described in and required by the application by the applicable deadlines. Applicants will not be afforded an opportunity to provide any missing materials or documentation, except if necessary and at the request of the CDFI Fund, to further explain the Assurances and Certifications section of the application. Electronic applications must be submitted solely by using the format made available at the CDFI Fund's Web site. Additional information, including instructions relating to the submission of supporting information (i.e., the Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts), is set forth in further detail in the electronic application. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service (IRS) and assigned to the Applicant and, if applicable, its Controlling Entity. Electronic applications without a valid EIN are incomplete and cannot be transmitted to the CDFI Fund. For more information on obtaining an EIN, please contact the IRS at (800) 829–4933 or *www.irs.gov.* Do not include any personal Social Security Numbers as part of the application.

An Applicant may not submit more than one application in response to this NOAA. In addition, as stated in Section III.A.4 of this NOAA, an Applicant and its Affiliates must collectively submit only one allocation application; an Applicant and its Affiliates may not submit separate allocation applications except as outlined above. Once an application is submitted, an Applicant will not be allowed to change any element of its application.

C. *Form of application submission:* Applicants may only submit applications under this NOAA electronically. Applications sent by facsimile or by email will not be accepted. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the CDFI Fund in the implementation of electronic reporting requirements.

1. *Electronic applications:* Electronic applications must be submitted solely by using the CDFI Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form. The CDFI Fund recommends use of Internet Explorer version 8 or higher on a Microsoft Windows-based computer (Windows Vista or higher), and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Use of other browsers (i.e., Firefox, Chrome, Safari), other versions of Internet Explorer, or other systems (i.e., Mac) might result in problems during submission of the application. The CDFI Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed. Additional information, including instructions relating to the submission of supporting information (i.e., the Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) is set forth in further detail in the electronic application and the Online Application Instructions for this Round.

D. *Application submission dates and times:*

1. *Application deadlines:*

(a) *Electronic applications:* Must be received by 5:00 p.m. ET on October 1, 2014. Electronic applications cannot be transmitted or received after 5:00 p.m. ET on October 1, 2014. In addition, Applicants must separately submit supporting information (i.e., the Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts) via their myCDFIFund account. The Applicant's authorized representative signature page, the Controlling Entity's representative signature page, investor letters and organizational charts must be submitted on or before 11:59 p.m. on October 3, 2014. Attachments may not exceed a size limit of 5 megabytes (MB). See application instructions, provided in the electronic application and the Round Allocation Application Q&A, for further detail. Applications and other required documents received after this date and time will be rejected. If the Applicant's authorized representative signature page is not received by the deadline specified above, the CDFI Fund reserves the right to reject the application. Please note that the document submission deadlines in this NOAA and/or the allocation application are strictly enforced.

(b) *Postmark:* For purposes of this NOAA, the term ''Postmark'' is defined by 26 CFR 301.7502–1. In general, the CDFI Fund will require that the Postmarked document bears a Postmark date that is on or before the applicable

deadline. The document must be in an envelope or other appropriate wrapper, properly addressed as set forth in this NOAA and delivered by the United States Postal Service or any other private delivery service designated by the Secretary of the Treasury. For more information on designated delivery services, please see IRS Notice 2002–62, 2002–2 C.B. 574.

E. *Intergovernmental Review:* Not applicable.

F. *Funding Restrictions:* For allowable uses of investment proceeds related to a NMTC allocation, please see 26 U.S.C. 45D and the final regulations issued by the Internal Revenue Service (26 CFR 1.45D–1, published December 28, 2004) and related guidance. Please see Section I, above, for the Programmatic Changes of this NOAA.

G. *Paperwork Reduction:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the application has been assigned the following control number: 1559–0016.

**V. Application Review Information**

There are two parts to the substantive review process for each allocation application: Phase 1 and Phase 2. In Phase 1, the CDFI Fund will evaluate each application, assigning points and numeric scores according to the criteria described below. In Phase 2, the CDFI Fund will rank Applicants in accordance with the procedures set forth below.

A. *Criteria:*

1. *Business Strategy* (25-point maximum): (a) When assessing an Applicant's business strategy, reviewers will consider, among other things: The Applicant's products, services and investment criteria; the prior performance of the Applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of QEIs; the Applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of the Applicant's pipeline of potential investments; the extent to which the Applicant intends to make QLICIs in one or more businesses in which persons unrelated to the entity hold a majority equity interest; how NMTCs will enable the Applicant to create additional value to its financing activities in Low-Income Communities; and the extent to which Applicants that otherwise have notable relationships with the Qualified Active Low Income Community Businesses (QALICBs) financed will create benefits (beyond those created in the normal course of a NMTC transaction) to Low-Income Communities.

Under the Business Strategy criterion, an Applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which are flexible or non-traditional in form and on better terms than available in the marketplace. An Applicant will also score well to the extent that, among other things, it: (i) Has a track record of successfully deploying products and services similar to those it intends to provide with the proceeds of QEIs; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing QEIs and making the related QLICIs in a time period that is significantly shorter than the 5-year period permitted under IRC § 45D(b)(1); (iv) in the case of an Applicant proposing to purchase loans from CDEs, the Applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to Low-Income Communities.

(b) *Priority Points:* In addition, as provided by IRC § 45D(f)(2), the CDFI Fund will ascribe additional points to entities that meet one or both of the statutory priorities. First, the CDFI Fund will give up to five (5) additional points to any Applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the CDFI Fund will give five (5) additional points to any Applicant that intends to satisfy the requirement of IRC § 45D(b)(1)(B) by making QLICIs in one or more businesses in which persons unrelated (within the meaning of IRC § 267(b) or IRC § 707(b)(1)) to an Applicant (or the Applicant's subsidiary CDEs) hold the majority equity interest. Applicants may earn points for one or both statutory priorities. Thus, Applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an Applicant itself or by its Controlling Entity (i.e., where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An Applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC allocation must meet the requirements of IRC § 45D(b)(1)(B) by investing substantially all of the proceeds from its QEIs in unrelated businesses. The CDFI Fund will factor in an Applicant's priority points when ranking Applicants during Phase 2 of the review process, as described below.

2. *Community Outcomes* (25-point maximum): In assessing the potential benefits to Low-Income Communities that may result from the Applicant's proposed investments, reviewers will consider, among other things, the degree to which the Applicant is likely to: (i) Achieve significant and measurable community development outcomes in its Low-Income Communities; (ii) invest in particularly economically distressed markets: (iii) engage with local communities regarding investments; and (iv) demonstrate a track record of investing in businesses that spur additional private capital investment in Low-Income Communities. An Applicant will generally score well under this section to the extent that: (a) It articulates how its strategy is likely to produce significant and measurable community development outcomes that would not be achieved without NMTCs; (b) it is working in particularly economically distressed or otherwise underserved communities; (c) its activities are part of a broader neighborhood revitalization strategy; (d) it ensures that an investment into a project or business is supported by and will be beneficial to the surrounding community; and (e) it is likely to engage in activities that will spur additional private capital investment.

3. *Management Capacity* (not scored in Phase 1): In assessing an Applicant's management capacity, CDFI Fund evaluators will consider, among other things, the qualifications of the Applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: Experience in deploying capital or technical assistance, including activities similar to those described in the Applicant's business strategy; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the Applicant's (or its Controlling Entity's) financial health. CDFI Fund evaluators will also consider the extent to which an Applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements and the level of involvement of community

representatives in the Governing Board and/or Advisory Board in approving investment criteria or decisions.

An Applicant will be generally evaluated more favorably under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the Applicant with the proceeds of QEIs; (b) asset and risk management; and (c) fulfilling government compliance requirements, particularly tax credit program compliance. An Applicant will also be evaluated favorably to the extent it demonstrates strong financial health and a high likelihood of remaining a going-concern; has policies and systems in place to ensure ongoing compliance with NMTC Program requirements; has Low-Income Community representatives in the Governing Board and/or Advisory Board that play an active role in designing or implementing its investment criteria and/or decisions; and, if it is a Federally-insured financial institution, its most recent Community Reinvestment Act (CRA) rating was ''outstanding.''

4. *Capitalization Strategy* (Not scored in Phase 1): When assessing an Applicant's capitalization strategy, CDFI Fund evaluators will consider, among other things: The key personnel of the Applicant (or Controlling Entity) and their track record of raising capital, particularly from for-profit investors; if a prior Allocatee, the track record of the Applicant or Controlling Entity in raising Qualified Equity Investments in the past five years, or if an Applicant or Controlling Entity have not raised Qualified Equity Investments in the past five years, the extent to which the Applicant has secured investments or commitments to invest in NMTC, or indications of investor interest commensurate with its requested amount of tax credit allocations; the Applicant's strategy for identifying additional investors, if necessary, including the Applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the distribution of the economic benefits of the tax credit; the extent to which the Applicant intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations; the likelihood the Applicant will raise sufficient capital to finance its cost of operations; and the Applicant's timeline for utilizing an NMTC allocation.

An Applicant be evaluated more favorably under this section to the extent that: (a) It or its Controlling Entity is a prior Allocatee and has a superior track record in the past five years of raising Qualified Equity Investments or it has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of QEIs it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it generally demonstrates that the economic benefits of the tax credit will be passed through to a QALICB; (d) it is likely to secure capital to finance its cost of operations consistent with the Applicant's overall business strategy and timeline for making investments; and (e) it intends to invest the proceeds from the aggregate amount of its QEIs at a level that exceeds the requirements of IRC § 45D(b)(1)(B) and the IRS regulations. In the case of an Applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the Applicant or from Affiliated entities, said Applicant will be evaluated more favorably to the extent that it will offer products with more favorable rates or terms than those currently offered by its investor(s) or Affiliated entities and/or will target its activities to areas of greater economic distress than those currently targeted by the investor or Affiliated entities.

B. *Review and selection process:* All allocation applications will be reviewed for eligibility and completeness. The CDFI Fund may consult with the IRS on the eligibility requirements under IRC § 45D. To be complete, the application must contain, at a minimum, all information described as required in the application form. An incomplete application will be rejected. Once the application has been determined to be eligible and complete, the CDFI Fund will conduct the substantive review of each application in two parts (Phase 1 and Phase 2) in accordance with the criteria and procedures generally described in this NOAA and the allocation application.

1. *Phase 1:* Reviewers will evaluate and score the Business Strategy and Community Outcomes sections of each application in the first part of the review process. An Applicant must exceed a minimum overall aggregate base score threshold *and* exceed a minimum aggregate section score threshold in each scored section in order to advance from the first part of the substantive review process. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the two application scored sections) varies significantly from other reviewers' total base scores or section scores for such application, the CDFI Fund may, in its sole discretion, obtain the comments and recommendations of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

2. *Phase 2:* Once the CDFI Fund has determined which Applicants have met the required minimum overall aggregate base score and aggregate section score thresholds, the CDFI Fund will rank Applicants on the basis of their combined scores in the Business Strategy and Community Outcomes sections of the application plus one half the priority points. The CDFI Fund will award allocations in the order of this ''Final Rank Score,'' subject to Applicants' meeting all other eligibility requirements; provided, however, that the CDFI Fund, in its sole discretion, reserves the right to reject an application and/or adjust award amounts as appropriate based on information obtained during the review process. Most notably, in the cases of Applicants (or their Affiliates) that are prior year Allocatees, the CDFI Fund will review the activities of the prior year Allocatee to determine whether the entity has: (a) Effectively utilized its prior-year allocations; and (b) substantiated a need for additional allocation authority.

3. *Late Reports:* In the case of an Applicant or any Affiliates that has previously received an award or allocation from the CDFI Fund through any CDFI Fund program, the CDFI Fund will deduct points for the Applicant's (or its Affiliate's) failure to meet any of the reporting deadlines set forth in any assistance, award or Allocation Agreement(s), if the reporting deadlines occurred during the period from September 18, 2013 to the application deadline in this NOAA (October 1, 2014).

C. *Allocations serving Non-Metropolitan counties:* As provided for under Section 102(b) of the Tax Relief and Health Care Act of 2006 (P.L. 109–432), the CDFI Fund shall ensure that non-metropolitan counties receive a proportional allocation of QEIs under the NMTC Program. To this end, the CDFI Fund will ensure that the proportion of Allocatees that are Rural CDEs is, at a minimum, equal to the proportion of Applicants in the Phase 2 review pool that are Rural CDEs. The CDFI Fund will also endeavor to ensure that 20 percent of the QLICIs to be made using QEI proceeds are invested in Non-

Metropolitan counties. A Rural CDE is one that has a track record of at least three years of direct financing experience, has dedicated at least 50 percent of its direct financing dollars to Non-Metropolitan counties over the past five years, and has committed that at least 50 percent of its NMTC financing dollars with this Allocation will be deployed in such areas. Non-Metropolitan counties are counties not contained within a Metropolitan Statistical Area, as such term is defined in OMB Bulletin No. 10–02 (Update of Statistical Area Definitions and Guidance on Their Uses) and applied using 2010 census tracts.

Applicants that meet the minimum scoring thresholds will be advanced to Phase 2 review and will be provided with ''preliminary'' awards, in descending order of Final Rank Score, until the available allocation authority is fulfilled. Once these ''preliminary'' award amounts are determined, the CDFI Fund will then analyze the Allocatee pool to determine whether the two Non-Metropolitan proportionality objectives have been met.

The CDFI Fund will first examine the ''preliminary'' awards and Allocatees to determine whether the percentage of Allocatees that are Rural CDEs is, at a minimum, equal to the percentage of Applicants in the Phase 2 review pool that are Rural CDEs. If this objective is not achieved, the CDFI Fund will provide awards to additional Rural CDEs from the Phase 2 pool, in descending order of their Final Rank Score, until the appropriate percentage balance is achieved. In order to accommodate the additional Allocatees within the available allocation limitations, a formula reduction will be applied uniformly to the allocation amount for all Allocatees in the pool.

The CDFI Fund will then determine whether the pool of Allocatees will, in the aggregate, invest at least 20 percent of their QLICIs (as measured by dollar amount) in Non-Metropolitan counties. The CDFI Fund will first apply the ''minimum'' percentage of QLICIs that Allocatees indicated in their applications would be targeted to Non-Metropolitan areas to the total allocation award amount of each Allocatee (less whatever percentage the Allocatee indicated would be retained for non-QLICI activities), and total these figures for all Allocatees. If this aggregate total is greater than or equal to 20 percent of the QLICIs to be made by the Allocatees, then the pool is considered balanced and the CDFI Fund will proceed with the allocation process. However, if the aggregate total is less than 20 percent of the QLICIs to be made by the Allocatees, the CDFI Fund will consider requiring any or all of the Allocatees to direct up to the ''maximum'' percentage of QLICIs that the Allocatees indicated would be targeted to Non-Metropolitan counties, taking into consideration their track record and ability to deploy dollars in Non-Metropolitan counties. If the CDFI Fund cannot meet the goal of 20 percent of QLICIs in Non-Metropolitan counties by requiring any or all Allocatees to commit up to the maximum percentage of QLICIs that they indicated would be targeted to Non-Metropolitan counties, the CDFI Fund may add additional Rural CDEs (in descending order of final rank score) to the Allocatee pool. In order to accommodate any additional Allocatees within the allocation limitations, a formula reduction will be applied as uniformly as possible, to the allocation amount for all Allocatees in the pool that have not committed to investing a minimum of 20 percent of their QLICIs in Non-Metropolitan counties.

D. *Questions:* All outstanding reports or compliance questions should be directed to the Office of Certification, Compliance Monitoring, and Evaluation by email at *ccme@cdfi.treas.gov or* by telephone at (202) 653–0423. The CDFI Fund will respond to reporting or compliance questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting the date of the publication of this NOAA through September 29, 2014. The CDFI Fund will not respond to reporting or compliance phone calls or email inquiries that are received after 5:00 p.m. ET on September 29, 2014 until after the funding application deadline of October 1, 2014.

E. *Right of rejection:* The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund awardee, if such Applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund Allocatee, if such Applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the CDFI Fund. The CDFI Fund reserves the right to reject any NMTC allocation application in the case of any Applicant, if an Affiliate of the Applicant has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the CDFI Fund.

The CDFI Fund reserves the right to reject any NMTC allocation application in the case of a prior CDFI Fund Allocatee, if such Applicant has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy (including, but not limited to, the proposed product offerings, QALICB type, and markets served) set forth in the allocation application(s) related to such prior allocation(s). The CDFI Fund also reserves the right to reject any NMTC allocation application in the case of an Affiliate of the Applicant that is a prior CDFI Fund Allocatee and has failed to use its prior NMTC allocation(s) in a manner that is generally consistent with the business strategy set forth in the allocation application(s) related to such prior allocation(s).

The CDFI Fund reserves the right to reject an NMTC allocation application if information (including administrative errors or omission of information) comes to the attention of the CDFI Fund that adversely affects an Applicant's eligibility for an award, adversely affects the CDFI Fund's evaluation or scoring of an application, adversely affects the CDFI Fund's prior determinations of CDE certification, or indicates fraud or mismanagement on the part of an Applicant or the Controlling Entity, if such fraud or mismanagement by the Controlling Entity would hinder the Applicant's ability to perform under the Allocation Agreement. If the CDFI Fund determines that any portion of the application is incorrect in any material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the application.

As a part of the substantive review process, the CDFI Fund may permit the Allocation Recommendation Panel member(s) to request information from Applicants for the sole purpose of obtaining, clarifying or confirming application information or omission of information. In no event shall such contact be construed to permit an Applicant to change any element of its application. At this point in the process, an Applicant may be required to submit additional information about its application in order to assist the CDFI Fund with its final evaluation process. Such requests must be responded to within the time parameters set by the CDFI Fund. The selecting official(s) will make a final allocation determination based on an Applicant's file, including, without limitation, eligibility under IRC§ 45D, the reviewers' scores and the amount of allocation authority available. In the case of Applicants (or the Controlling Entity, or Affiliates) that are regulated or receives oversight by the

Federal government or a State agency (or comparable entity), the CDFI Fund may request additional information from the Applicant regarding Assurances and Certifications or other information about the ability of the Applicant to effectively perform under the Allocation Agreement. The Allocation Recommendation Panel or selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal or State banking and other regulatory agencies. The CDFI Fund reserves the right to reject any NMTC Allocation Application if additional information is obtained that, after further due diligence and in the discretion of the CDFI Fund, would hinder the Applicant's ability to effectively perform under the Allocation Agreement. In the case of Applicants (or Affiliates of Applicants) that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the CDFI Fund reserves the right to consult with and take into consideration the views of the Small Business Administration.

The CDFI Fund reserves the right to conduct additional due diligence, as determined reasonable and appropriate by the CDFI Fund, in its sole discretion, related to the Applicant, Affiliates, the Applicant's Controlling Entity and the officers, directors, owners, partners and key employees of each.

Each Applicant will be informed of the CDFI Fund's award decision through an electronic notification whether selected for an allocation or not selected for an allocation, which may be for reasons of application incompleteness, ineligibility or substantive issues. All Applicants that are not selected for an allocation based on substantive issues will likely be given the opportunity to obtain feedback on their applications. This feedback will be provided in a format and within a timeframe to be determined by the CDFI Fund, based on available resources.

The CDFI Fund further reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If said changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site.

There is no right to appeal the CDFI Fund's NMTC allocation decisions. The CDFI Fund's NMTC allocation decisions are final.

## VI. Award Administration Information

### *A. Allocation Award Compliance*

1. *Failure to meet reporting requirements:* If an Allocatee, or an Affiliate of an Allocatee, is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation, or award agreement(s), as of the date of the NOA or thereafter, the CDFI Fund reserves the right, in its sole discretion, to reject the application, delay entering into an Allocation Agreement, and/or impose limitations on an Allocatee's ability to issue QEIs to investors until said prior awardee or Allocatee is current on the reporting requirements in the previously executed assistance, allocation, or award agreement(s). Please note that the automated systems the CDFI Fund uses for receipt of reports submitted electronically typically acknowledges only a report's receipt; such an acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If said prior awardee or Allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the allocation made under this NOAA.

2. *Pending determination of noncompliance or default:* If an Allocatee is a prior awardee or Allocatee under any CDFI Fund program and if: (i) It has submitted reports to the CDFI Fund that demonstrate potential noncompliance with or a default under a previous assistance, award, or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default under its previous assistance, award, or Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue Qualified Equity Investments to investors, pending final determination of whether the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. Further, if an Affiliate of an Allocatee is a prior CDFI Fund awardee or Allocatee and if such entity: (i) Has submitted reports to the CDFI Fund that demonstrate potential noncompliance/default under a previous assistance, award, or Allocation Agreement; and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance/default under its previous assistance, award, or Allocation Agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, pending final determination of whether the entity is in noncompliance or default, and determination of remedies, if applicable, in the sole determination of the CDFI Fund. If the prior awardee or Allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award notification made under this NOAA.

3. *Default status:* If prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a determination that an Allocatee that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation, or assistance agreement(s); (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into an Allocation Agreement is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the Notice of Allocation and the allocation made under this NOAA. Furthermore, if prior to entering into an Allocation Agreement through this NOAA: (i) The CDFI Fund has made a determination that an Affiliate of the Allocatee that is a prior CDFI Fund awardee or Allocatee under any CDFI Fund program is in default of a previously executed assistance, allocation, or award agreement(s) (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into an Allocation Agreement is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Allocation Agreement and/or to impose limitations on the Allocatee's ability to issue QEIs to investors, or to terminate and rescind the Notice of Allocation and the allocation made under this NOAA.

B. *Allocation Agreement:* Each Applicant that is selected to receive a

NMTC allocation (including the Applicant's Subsidiary transferees) must enter into an Allocation Agreement with the CDFI Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC allocation which may include, but are not limited to, the following: (i) The amount of the awarded NMTC allocation; (ii) the approved uses of the awarded NMTC allocation (i.e., loans to or equity investments in Qualified Active Low-Income Businesses or loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of QEIs may be used, including the dollar amount of QLICIs that must be invested in Non-Metropolitan counties; (iv) the time period by which the Applicant may obtain QEIs from investors; (v) reporting requirements for all Applicants receiving NMTC allocations; and (vi) a requirement to maintain certification as a CDE throughout the term of the Allocation Agreement. If an Applicant has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the Applicant hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said Applicant agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the Applicant hold a majority equity interest.

In addition to entering into an Allocation Agreement, each Applicant selected to receive a NMTC allocation must furnish to the CDFI Fund an opinion from its legal counsel or a similar certification, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an Applicant (and its Subsidiary transferees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and the jurisdiction(s) in which it operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

If an Allocatee identifies Subsidiary transferees, the CDFI Fund reserves the right to require an Allocatee to provide supporting documentation evidencing that it Controls such entities prior to entering into an Allocation Agreement with the Allocatee and its Subsidiary transferees. The CDFI Fund reserves the right, in its sole discretion, to rescind its allocation award if the Allocatee fails to return the Allocation Agreement, signed by the authorized representative of the Allocatee, and/or provide the CDFI Fund with any other requested documentation, including an approved legal opinion, within the deadlines set by the CDFI Fund.

C. *Fees:* The CDFI Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC allocations. Prior to imposing any such fee, the CDFI Fund will publish additional information concerning the nature and amount of the fee.

D. *Reporting:* The CDFI Fund will collect information, on at least an annual basis from all Applicants that are awarded NMTC allocations and/or are recipients of QLICIs, including such audited financial statements and opinions of counsel as the CDFI Fund deems necessary or desirable, in its sole discretion. The CDFI Fund will require the Applicant to retain information as the CDFI Fund deems necessary or desirable and shall provide such information to the CDFI Fund when requested to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The CDFI Fund may also provide such information to the IRS in a manner consistent with IRC § 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each QEI raised through its NMTC allocation to make QLICIs. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after due notice to Allocatees.

## VII. Agency Contacts

The CDFI Fund will provide programmatic and information technology support related to the allocation application between the hours of 9:00 a.m. and 5:00 p.m. ET through September 29, 2014. The CDFI Fund will not respond to phone calls or emails concerning the application that are received after 5:00 p.m. ET on September 29, 2014 until after the allocation application deadline of October 1, 2014. Applications and other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* The CDFI Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 653–0422 or by email at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the CDFI Fund's Web site should call (202) 653–0422 for assistance. These are not toll free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by email at *cdfihelp@cdfi.treas.gov;* or by telephone at (202) 653–0421. These are not toll-free numbers.

C. *Administrative support:* If you have any questions regarding the administrative requirements of this NOAA, contact the CDFI Fund's NMTC Program Manager by email at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 653–0421. These are not toll free numbers.

D. *IRS support:* For questions regarding the tax aspects of the NMTC Program, contact Jian Grant, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 317–4137, by facsimile at (202) 317–6731. These are not toll free numbers. Applicants wishing formal ruling request should see IRS Internal Revenue Bulletin 1401–1, issued January 2, 2014.

## VIII. Information Sessions

In connection with this NOAA, the CDFI Fund may conduct one or more information sessions that will be produced in Washington, DC and broadcast over the internet via webcasting as well as telephone conference calls. For further information on these upcoming information sessions, please visit the CDFI Fund's Web site at *http://www.cdfifund.gov.*

**Authority:** 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Dated: August 5, 2014.

**Dennis Nolan,**

*Deputy Director, Community Development Financial Institutions Fund.*

[FR Doc. 2014–18792 Filed 8–7–14; 8:45 am]

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# FEDERAL REGISTER

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Part II

## Environmental Protection Agency

40 CFR Part 49

Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 49**

**[EPA–R09–OAR–2013–0009; FRL–9914–62–Region 9]**

## Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is promulgating a source-specific Federal Implementation Plan (FIP) requiring the Navajo Generating Station (NGS), a coal-fired power plant located on the Navajo Nation near Page, Arizona, to achieve reductions in oxides of nitrogen ($NO_X$) required under the Best Available Retrofit Technology (BART) provisions of the Clean Air Act (CAA) and the Regional Haze Rule (RHR). On February 5, 2013, EPA issued a proposed BART determination for NGS and an alternative to BART. In a supplemental proposal on October 22, 2013, EPA proposed to approve a new alternative plan, based on an agreement developed by a group of stakeholders known as the Technical Work Group (TWG). EPA is finalizing the alternative to BART described in our supplemental proposal. This rule is consistent with the TWG Agreement, including a lifetime cap in total emissions of $NO_X$ from NGS over 2009–2044 (2009–2044 $NO_X$ Cap). Our final action will achieve greater emissions reductions than BART and is expected to significantly reduce the impact of NGS on visibility at 11 mandatory Class I Federal areas. The operator of NGS must implement one of several alternative operating scenarios to achieve the necessary emission reductions to comply with the 2009–2044 $NO_X$ Cap.

**DATES:** *Effective date:* This rule is effective on October 7, 2014.

**FOR FURTHER INFORMATION CONTACT:** Anita Lee, EPA Region 9, (415) 972–3958, *lee.anita@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2013–0009. The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g. copyrighted material, voluminous or oversized documents, etc.), and some may not be publicly available in either location (e.g. Confidential Business Information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. A reasonable fee may be charged for copies.

Throughout this document, ''we'', ''us'', and ''our'' refer to EPA.

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### I. Executive Summary

EPA is taking final action pursuant to the CAA and the RHR to require Units 1, 2, and 3 at NGS to reduce emissions of $NO_X$ in order to reduce the impact NGS has on visibility at 11 mandatory Class I Federal areas. We are finalizing an alternative to BART based on agreed-upon recommendations developed by a group of diverse stakeholders known as the Technical Work Group (TWG). Our final action limits emissions of $NO_X$ from NGS by establishing a long-term facility-wide cap on total $NO_X$ emissions from 2009 to 2044 and requires the implementation of one of several alternative operating scenarios to ensure that the 2009–2044 cap is met. Generally, the alternative operating scenarios require the closure of one unit at NGS (or the curtailment of electricity generation by a similar amount) in 2019, and compliance with a $NO_X$ emission limit that is achievable with the installation of selective catalytic reduction (SCR) on two units in 2030.

As part of our final action, EPA is also setting a source-specific BART Benchmark against which to compare the TWG Alternative to ensure that it will achieve greater reasonable progress than BART. The BART Benchmark is consistent with the BART determination we proposed on February 5, 2013, requiring all three units at NGS to meet an emission limit achievable with SCR within five years of a final rule. EPA is not finalizing our proposed BART determination for NGS in the regulatory requirements of this Final Rule.

EPA's action to finalize an alternative to BART consistent with the TWG Agreement will achieve greater $NO_X$ emission reductions at lower cost than BART in exchange for flexibility in the timeframe for achieving $NO_X$ reductions. When fully implemented, this Final Rule requires over an 80 percent reduction in $NO_X$ emissions from NGS and is expected to significantly reduce the impact of NGS on visibility at 11 mandatory Class I Federal areas.

### II. Background for the Final Rule

#### *A. History of NGS*

NGS is a coal-fired power plant located on the Navajo Nation Indian Reservation near Page, Arizona. The facility consists of three 750 megawatt (MW) coal-fired electric utility steam generating units with a total capacity of 2250 MW constructed from 1974 to 1976. The three units at NGS are co-owned by six entities: The United States Bureau of Reclamation (Reclamation) (24.3 percent); Salt River Project (21.7 percent), which also serves as the facility operator; Los Angeles Department of Water and Power (21.2 percent); Arizona Public Service (14 percent); NV Energy (11.3 percent); and Tucson Electric Power (7.5 percent).

Federal participation in NGS was authorized in the Colorado River Basin Project Act of 1968 as a preferred alternative to building hydroelectric dams in the Grand Canyon for the purpose of providing power to the Central Arizona Project (CAP).[1] The

[1] For more detail and for citations or references to the information provided in this Background section, please see the Proposed Rule at 78 FR 8274 (February 5, 2013).

CAP is a 336-mile water distribution system that delivers about 1.5 million acre-feet (AF) per year of Colorado River water from Lake Havasu in western Arizona to non-Indian agricultural (NIA) water users in central Arizona, Indian tribes located in Arizona, and municipal water users in Maricopa, Pinal, and Pima Counties in Arizona. The CAP water is used to meet the terms of a number of Indian water-rights settlements in central Arizona and to reduce groundwater usage in the region. A portion of Reclamation's share of electricity from NGS powers the pumps that move CAP water to its destinations along the distribution system.

Several tribes located in Arizona, including the Gila River Indian Community, the Ak-Chin Indian Community, the Tohono O'odham Nation, the San Carlos Apache Tribe, the White Mountain Apache Indian Tribe, the Fort McDowell Yavapai Nation, the Salt River Pima-Maricopa Indian Community, the Navajo Nation, the Yavapai-Apache Nation, the Hopi Tribe, the Pascua Yaqui Tribe, the Yavapai-Prescott Tribe, and the Tonto Apache Nation, have CAP water allocations or contracts. In exchange for allocations of CAP water at reduced cost and access to funds for the development of water infrastructure, the tribes with water settlement agreements have released their claims to other water in Arizona. Excess NGS power owned by Reclamation that is not used by CAP is sold and profits are deposited into the Lower Colorado River Basin Development Fund (Development Fund) to support the tribal water settlement agreements. The U.S. Department of the Interior (DOI or Interior), through Reclamation, plays an important role in the implementation of these settlement agreements and the management of the Development Fund.

The coal used by NGS is supplied by the Kayenta Mine, operated by Peabody Energy and located on reservation lands of both the Navajo Nation and the Hopi Tribe. Taxes and royalties from NGS and the Kayenta Mine are paid to the Navajo Nation and Hopi Tribe, contributing to the annual revenues for both governments. EPA understands that the process is underway to renew site leases for NGS and the Kayenta Mine, as well as associated rights of way agreements and contracts with the Navajo Nation and Hopi Tribe.

Given the extent of federal and tribal interests in NGS, on January 4, 2013, EPA, DOI, and the Department of Energy (DOE) signed a joint federal agency statement (Joint Statement) committing to collaborate on several short- and long-term goals, including analyzing and pursuing strategies for providing clean, affordable, and reliable power, affordable and sustainable water, and sustainable economic development to key stakeholders who currently depend on NGS.[2] The Joint Statement also recognizes the trust responsibility of the Federal government to Indian tribes.

*B. Summary of Statutory and Regulatory Framework for Addressing Visibility and Sources Located in Indian Country*

In our Proposed Rules, we provided a detailed discussion of the statutory and regulatory framework for addressing visibility impairment in the mandatory Class I Federal Areas, addressing sources located in Indian country under the statute and the Tribal Authority Rule (TAR), and developing BART determinations pursuant to the CAA and the BART Guidelines set forth in Appendix Y to 40 CFR Part 51.[3] Here, we provide a brief summary of the statutory and regulatory framework.

Title I, part C, subpart II of the CAA Amendments of 1977 establishes a visibility protection program that sets forth ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from man-made air pollution.'' [4] EPA promulgated regional haze regulations implementing the program on April 22, 1999.[5] Consistent with the statutory requirement in 42 U.S.C. 7491(b)(2)(a), EPA's 1999 regional haze regulations include a provision that States must require certain major stationary sources to procure, install, and operate BART. This provision covers sources in listed industrial categories with the potential to emit 250 or more tons per year of an air pollutant that were ''in existence on August 7, 1977, but which ha[ve] not been in operation for more than fifteen years as of such date.'' These sources are considered to be ''BART-eligible.'' [6] NGS meets these criteria and is a BART-eligible source.[7]

BART-eligible sources that are reasonably anticipated to cause or contribute to visibility impairment are ''subject'' to the BART requirements.[8] Generally speaking, a BART-eligible source with a predicted visibility impact of 0.5 deciviews (dv) or more in a Class I area is considered to ''contribute'' to visibility impairment.[9] NGS contributes to visibility impairment at 11 surrounding Class I areas in excess of this threshold, and is thus subject to BART.

In determining BART, States are required to take into account five factors identified in the CAA and EPA's regulations.[10] Those factors are: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any pollution control equipment in use or in existence at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.[11] EPA's guidelines for evaluating BART provide more detail and are set forth in Appendix Y to 40 CFR Part 51.

In 1998, EPA promulgated the Tribal Authority Rule (TAR) relating to implementation of CAA programs in Indian country.[12] In the TAR, EPA determined that it has the discretionary authority to promulgate ''such federal implementation plan provisions as are necessary or appropriate to protect air quality'' consistent with CAA sections 301(a) and 301(d)(4) when a tribe has not submitted or EPA has not approved a Tribal Implementation Plan (TIP).[13] EPA has previously promulgated FIPs under the TAR to regulate air pollutants emitted from NGS.[14]

Under the CAA, compliance with emission limits determined to be BART must be achieved as expeditiously as practicable but not later than 5 years after the effective date of the final BART determination (See CAA 169A(b)(2)(A) and (g)(4)). As discussed in greater detail in our Proposed Rule, EPA

[2] See document title ''2013_0104 Joint Federal Agency Statement on NGS'' within document number 0005 in the docket for this proposed rulemaking at EPA–R09–OAR–2013–0009, which can be found at *www.regulations.gov*.

[3] See 78 FR 8274 (February 5, 2013) and 78 FR 62509 (October 22, 2013).

[4] See 42 U.S.C. 7419A(a)(1).

[5] See 64 FR 35765 (April 22, 1999).

[6] See 40 CFR 51.308(e)(1).

[7] See 74 FR 44314 (August 28, 2009); 78 FR 8279 (February 5, 2013); see also 56 FR 50172 (October 3, 1991) addressing BART for $SO_2$ based on Reasonably Attributable Visibility Impairment.

[8] See 70 FR 39104 at 39161 (July 6, 2005).

[9] *Id.*

[10] 42 U.S.C. 7491(g)(2) and 40 CFR 51.308(e)(1)(A)(ii)(A).

[11] 40 CFR 51.308(e)(1)(ii)(A).

[12] *See* 40 CFR part 49; *see* also 59 FR 43956 (August 25, 1994) (proposed rule); 63 FR 7254 (February 12, 1998) (final rule); *Arizona Public Service Company* v. *EPA,* 211 F.3d 1280 (D.C. Cir. 2000), *cert. den.,* 532 U.S. 970 (2001) (upholding the TAR).

[13] See 40 CFR 49.11(a).

[14] See 56 FR 50172 (October 3, 1991). In 1999, EPA proposed a FIP for NGS to fill the regulatory gap that existed because Arizona State permits and SIP rules are not applicable or enforceable in the Navajo Nation, and the Tribe had not sought approval of a TIP covering the plant. 64 FR 48731 (September 8, 1999). EPA then re-proposed the FIP with some additional conditions in September 2006. 71 FR 53631 (September 12, 2006). EPA finalized that NGS FIP on March 5, 2010. 75 FR 10174.

recognizes that the circumstances related to NGS create unusual and significant challenges for a 5-year compliance schedule.[15] Based on those challenges and our discretion under the TAR for implementing CAA requirements in Indian country, we considered other options that are consistent with the CAA and RHR, and that provide for a more flexible, extended compliance schedule.

EPA's BART regulations allow an alternative in lieu of BART, provided the alternative results in greater reasonable progress than would have been achieved through installation of BART.[16] Generally, an alternative is considered to be approvable provided it results in greater emissions reductions and the geographic distribution in emissions from the alternative is not substantially different than the distribution of the emissions under BART.[17] For a state that is subject to the submittal deadlines in the RHR, the regulations provide that alternatives to BART must ensure that all necessary emission reductions occur within the period of the first long-term strategy for regional haze (i.e., by 2018) for states that were required to submit regional haze SIPs in December 2007.[18] Thus, if states had submitted timely regional haze SIPs in 2007 with BART compliance deadlines in 2012, the RHR provided more than 5 additional years for the implementation of alternatives to BART.

### *C. Summary of Proposed Rule and Supplemental Proposal*

EPA published an advanced notice of proposed rulemaking (ANPR) concerning BART for NGS and the Four Corners Power Plant in August 2009.[19] On February 5, 2013, EPA's proposed BART determination for NGS was published in the **Federal Register** and provided a thorough discussion of the statutory and regulatory framework for addressing visibility through application of BART for sources located in Indian country, and of the factual background for our BART determination at NGS.[20] The proposal analyzed the five BART factors and proposed to find that BART for NGS was installation of emissions controls to meet a $NO_X$ emission limit of 0.055 lb/MMBtu based on a rolling average of 30 boiler operating days (30–BOD average).[21] However, in recognition of the important role that NGS and the Kayenta Mine play in providing employment and revenue to the Navajo Nation and Hopi Tribe, and the role of Reclamation's share of electricity generated by NGS in fulfilling water settlement agreements with numerous tribes located in Arizona, we proposed that the potential economic impacts to tribes argue for thoughtful consideration of how flexibility in the compliance timeframe could be provided consistent with the air quality goals of the CAA.[22] Therefore, as discussed in our Proposed Rule, EPA proposed to exercise our authority and discretion under section 301(d)(4) of the CAA and 40 CFR 49.11(a) to propose an appropriate timeframe for alternative measures to BART under the RHR for NGS. We provided a thorough discussion of the legal rationale for setting the compliance schedule for alternative measures in our Proposed Rule.[23]

Our Proposed Rule included a framework for evaluating alternatives to BART.[24] As part of the framework, EPA proposed a $NO_X$ emission credit for the previous early and voluntary installation of low-$NO_X$ burners with separated over-fire air (LNB/SOFA) over the 2009–2011 timeframe (LNB/SOFA credit). We proposed that the LNB/SOFA credit supported setting a compliance timeframe based on the flexibility under section 301(d)(4) of the CAA and 40 CFR 49.11(a).[25] EPA proposed to find that an alternative is ''better than BART'' if the total emissions over 2009–2044 from the alternative measure, minus the LNB/SOFA credit, are less than the total emissions under our proposed BART determination for the same period (i.e., the BART Benchmark). Consistent with this framework, EPA proposed an alternative to BART, requiring compliance with an emission limit of 0.055 lb/MMBtu on one unit per year in 2021, 2022, and 2023 (Alternative 1). We calculated that total emissions under Alternative 1 over 2009–2044, minus the LNB/SOFA credit, would be less than emissions based on the BART Benchmark. Thus, we proposed to find that Alternative 1 was ''better than BART''. EPA recognized that there may be interest in additional flexibility beyond the 2021–2023 timeframe. EPA evaluated two additional compliance schedules but did not propose to approve them as ''better than BART'' alternatives because total emissions over 2009–2044 under these compliance schedules exceeded the BART Benchmark. However, we noted that potential technologies or other options for achieving additional emission reductions could bridge the $NO_X$ emission reduction deficit for alternatives to BART with compliance schedules that do not, by themselves, meet the BART Benchmark.[26] We invited stakeholders to submit additional BART alternatives, consistent with our proposed framework, for EPA's consideration.

On July 26, 2013, a stakeholder group, known as the Technical Work Group on NGS (TWG), submitted an agreement that had been established among the seven diverse entities in the TWG. We refer to the July 26, 2013, document as the ''TWG Agreement.'' The TWG is composed of representatives from Central Arizona Water Conservation District (CAWCD), the Environmental Defense Fund (EDF), the Gila River Indian Community (Gila River or the Community), the Navajo Nation (Navajo), Salt River Project (SRP) on behalf of itself and the other non-federal owners, DOI, and Western Resource Advocates (WRA). Although EPA attended the opening session of a ''kick-off'' meeting for the TWG on March 21, 2013, at which we described our Proposed Rule, EPA did not otherwise participate in the TWG and was not involved in any of the discussions leading to submittal of the TWG Agreement.

Appendix B to the TWG Agreement contained TWG's recommendation for an alternative to BART. In general, the alternative plan in the TWG Agreement included closure of one unit at NGS, or curtailment of net generating capacity by an equivalent amount, in 2019 and compliance with a $NO_X$ emission limit of 0.07 lb/MMBtu on two units at NGS beginning in 2030. The TWG Agreement

[15] Because of its complicated history and its location on the Navajo Nation, NGS faces numerous unique complexities and the unusual requirement to comply with NEPA for lease and other rights-of-way approvals, which apply only to NGS and Four Corners Power Plant, the other coal-fired power plant located on the Navajo Nation. EPA also understands the importance of the continued operation of NGS and the Kayenta Mine to the Navajo Nation and Hopi Tribe as a source of direct revenues through lease payments and coal royalties, as well as the importance of Reclamation's share of NGS to supply water to many tribes located in Arizona in accordance with several water settlement acts. EPA also recognizes that Reclamation may have fewer options compared to the other owners for financing pollution control or other large capital improvement projects at NGS. SRP expressed concern that the owners of NGS may choose to retire the facility if faced with the financial risk of making a large capital investment within 5 years without also having certainty that the lease and contract re-negotiations would conclude in a timely and favorable manner.

[16] 40 CFR 51.308(e)(2).

[17] 40 CFR 51.308(e)(3).

[18] 40 CFR 51.308(e)(2)(iii).

[19] See 74 FR 44314 (August 28, 2009).

[20] See 78 FR 8274 (February 5, 2013).

[21] *Id.* at 8288.

[22] *Id.* at 8284.

[23] *Id.* at 8289.

[24] *Id.* at 8290–92.

[25] 78 FR 62509 at 62511 (October 22, 2013).

[26] 78 FR 8274 at 8291 (February 5, 2013).

also included a provision requiring the operator of NGS to cease conventional coal-fired generation at NGS by the end of 2044.

EPA independently evaluated Appendix B to the TWG Agreement to determine whether it complied with the framework we put forth in our Proposed Rule, as well as the statutory and regulatory requirements in the CAA and the RHR. On October 22, 2013, EPA published a Supplemental Proposal describing the TWG Agreement and requesting comment.[27] Our Supplemental Proposal contained a detailed evaluation of Appendix B to the TWG Agreement along with a discussion of our legal rationale for proposing to approve requirements consistent with the TWG Agreement as meeting the requirements for an alternative to BART. Throughout this document, we refer to the regulations we proposed in our Supplemental Proposal that are consistent with Appendix B of the TWG Agreement as the ''TWG Alternative.'' Thus, in this document, the term TWG Alternative refers to EPA's independent regulatory requirements for NGS consistent with the TWG Agreement, rather than to Appendix B of the TWG Agreement.

In our Supplemental Proposal, we proposed to revise the numerical value of the BART Benchmark from our Proposed Rule. We also proposed a 2009–2044 $NO_X$ Cap based on the revised numerical value of the BART Benchmark. In our Proposed Rule, we calculated the BART Benchmark to be 358,974 tons of $NO_X$. As discussed in our Supplemental Proposal, we proposed three changes to the BART Benchmark: (1) Correction of a transcription error; (2) correction of the date that EPA anticipated would be 5 years following the effective date of the final rule (i.e., July 1, 2019 instead of January 1, 2018); and (3) application of the LNB/SOFA credit to the BART Benchmark, rather than alternatives to BART, to represent emissions under BART if LNB/SOFA had been installed concurrently with selective catalytic reduction (SCR) to reduce $NO_X$ emissions.[28] Based on these changes, EPA proposed a 2009–2044 $NO_X$ Cap of 494,899 tons. Although EPA revised our accounting method for the LNB/SOFA credit in our Supplemental Proposal, EPA provided a demonstration that the method EPA used in our Proposed Rule to compare our proposed BART determination against BART alternatives was equivalent to the method in the Supplemental Proposal.[29] The application of the LNB/SOFA credit to the BART Benchmark in the Supplemental Proposal represented what total emissions over 2009–2044 would have been under our proposed BART determination if the operator of NGS had elected to install LNB/SOFA concurrently with SCR, i.e., within 5 years of a final rule, rather than in 2009–2011. Calculation of the BART Benchmark and 2009–2044 $NO_X$ Cap in this manner is easier to apply and enforce in the context of a cap in $NO_X$ emissions because the LNB/SOFA credit is built into the BART Benchmark rather than subtracted each year from actual cumulative emissions.[30]

In addition to the enforceable 2009–2044 $NO_X$ Cap, our Supplemental Proposal defines the operating scenarios that would be required depending on the final outcome of NGS ownership after the expiration of the current lease term at the end of 2019. In the TWG Agreement, the owners of NGS committed to maintain emissions from NGS below the 2009–2044 $NO_X$ Cap regardless of post-2019 ownership of NGS and the applicable operating scenario. As a result, the operating scenarios in the TWG Alternative include specific actions for achieving emission reductions in 2019 and in 2030. The TWG Alternative also provides for an operating scenario that is less well-defined in terms of specific actions but establishes a second $NO_X$ emissions cap over the period of 2009–2029 (2009–2029 $NO_X$ Cap) that is equivalent to emission reductions that would be achieved by a more well-defined operating scenario. The 2009–2029 $NO_X$ Cap would apply in addition to the 2009–2044 $NO_X$ Cap. The Supplemental Proposal included requirements for annual emission reporting to EPA that would also be made publicly available as part of the compliance demonstration for the TWG Alternative.

*D. Summary of Legal Rationale for Compliance Flexibility*

In our February 5, 2013, proposal for NGS, EPA proposed an alternative to BART that we referred to as Alternative 1. EPA proposed to find that consideration of a compliance schedule beyond 2018 for Alternative 1 at NGS was appropriate for a number of reasons, including the importance of NGS to numerous Indian tribes located in Arizona and the federal government's reliance on NGS to meet the requirements of water settlements with several tribes. Providing this timeframe for compliance would not, in itself, avoid or mitigate increases in water rates for tribes located in Arizona; however, it would provide time for the collaborating federal agencies to explore options to avoid or minimize potential impacts to tribes, including seeking funding to cover expenses for the federal portion of pollution control at NGS.

In developing this framework, EPA proposed to exercise its authority and discretion under section 301(d)(4) of the CAA, 42 U.S.C. 7601(d)(4) and the TAR, 40 CFR 49.11(a), and proposed an appropriate timeframe for an alternative measure under the RHR for NGS. EPA considered this timeframe to be consistent with the general programmatic requirements. Under the RHR, States and regulated sources had almost 20 years from the issuance of the rule in 1999 to design and implement alternative measures to BART. For numerous reasons, including the myriad stakeholder interests and complex governmental interests unique to NGS, we are only now addressing the BART requirements for NGS.

Our proposal to require emission reductions beyond 2018 was supported by CAA section 301(d)(4) and the TAR codified at 40 CFR 49.11(a). The TAR reflects EPA's commitment to promulgate ''such Federal implementation plan *provisions as are necessary or appropriate* to protect air quality'' in Indian country where a tribe either does not submit a Tribal Implementation Plan (TIP) or does not receive approval of a submitted TIP (*emphasis added*).

The use of the term ''provisions as are necessary or appropriate'' indicates EPA's determination that it may only be necessary or appropriate to promulgate a FIP of limited scope. The United States Court of Appeals for the Tenth Circuit has previously endorsed the

[27] See 78 FR 62509 (October 22, 2013).

[28] *Id.* Tables 1 and 3 at 62515–62516.

[29] Id. Table 2 and footnote 32 at 62515.

[30] In contrast, in our Proposed Rule, we calculated the BART Benchmark and emissions under BART alternatives using the actual early installation dates for LNB/SOFA and then applied the LNB/SOFA credit to BART alternatives for comparison against the BART Benchmark. Although this method would have resulted in a lower numerical value for the 2009–2044 $NO_X$ Cap, the LNB/SOFA credit (representing the early emission reductions achieved over 2009–2018) would have instead been subtracted from the calculations of cumulative emissions under the BART alternative. Although this is functionally equivalent to the method used in the Supplemental Proposal, this method would make annual comparisons of actual cumulative emissions under the BART alternative against the BART Benchmark more complicated because it would have required adjustments every year to total emissions to subtract out the LNB/SOFA credit. By accounting for the LNB/SOFA credit in the BART Benchmark, the actual annual emissions from NGS can be directly compared to the BART Benchmark without any further adjustments.

application of this approach in a challenge to the FIP for the Four Corners Power Plant, stating: ''[40 CFR 49.11(a)] provides the EPA discretion to determine what rulemaking is necessary or appropriate to protect air quality and requires the EPA to promulgate such rulemaking.'' [31] The court went on to observe: ''Nothing in section 49.11(a) requires EPA . . . to submit a plan meeting the completeness criteria of [40 CFR part 51] Appendix V.'' [32] While the decision in the Tenth Circuit focused on 40 CFR part 51, Appendix V, EPA believes the same considerations apply to the promulgation of a FIP intended to address the objectives set forth in 40 CFR 51.308(e)(2). In particular, EPA has discretion to determine if and when a FIP addressing the objectives set forth in 40 CFR 51.308(e)(2) should be promulgated, which necessarily includes discretion to determine the timing for complying with the requirements of any such FIP.

## III. Summary of Final FIP Provisions

EPA is finalizing our finding that it is necessary or appropriate to promulgate a source-specific FIP requiring NGS to achieve $NO_X$ emission reductions required by the BART provisions of the CAA and RHR. EPA is determining that our proposed $NO_X$ emission limit of 0.055 lb/MMBtu, based on our analysis of the relevant factors, establishes the appropriate BART Benchmark for determining ''better than BART.'' Further, we are finalizing our assessment that the TWG Alternative, which establishes an enforceable 2009–2044 cap on $NO_X$ emissions from NGS over the life of the facility is ''better than BART.'' Finally, we are finalizing the TWG Alternative as the FIP requirements for NGS.

EPA is promulgating four possible operating scenarios under the TWG Alternative (see Table 1). The operator of NGS must implement one of the four enforceable operating scenarios in order to comply with the 2009–2044 $NO_X$ Cap. The applicable operating scenario will depend on the outcome of ownership changes related to LADWP, NV Energy, and Navajo Nation, as well as whether the operator of NGS can increase capacity (by no more than 189 MW) to accommodate ownership changes, without triggering New Source Review permitting requirements, as described in Table 1. Once the ownership outcomes are finalized, the operator of NGS must implement the applicable Alternative as shown in Table 1. For example, if LADWP and NV Energy both retire their ownership shares of NGS and the Navajo Nation does not elect to purchase an ownership share of NGS, TWG Alternative A1 applies and the operator of NGS must implement Alternative A1 and may not elect to implement Alternatives A2, A3, or B. By December 1, 2019, the operator of NGS must notify EPA of the applicable Alternative (i.e., TWG Alternative A1, A2, A3, or B).

In addition to the enforceable 2009–2044 $NO_X$ Cap, Alternatives A1, A2, and A3 each has enforceable emission reduction measures in 2019 and 2030 (see Table 1). Under Alternative B, in addition to the enforceable 2009–2044 $NO_X$ Cap, the operator of NGS must also ensure that cumulative $NO_X$ emissions over 2009–2029 comply with the 2009–2029 $NO_X$ Cap. The 2009–2029 $NO_X$ Cap is calculated based on emissions that would have been emitted over that period under Alternative A1. Under all Alternatives, if, based on required annual reports submitted by the operator of NGS to EPA, cumulative emissions of $NO_X$ from NGS exceed the 2009–2044 $NO_X$ Cap at any time prior to December 31, 2044, the operator of NGS must permanently cease operation of NGS. In addition, under Alternative B, if cumulative emissions of $NO_X$ exceed the 2009–2029 $NO_X$ Cap prior to 2029, the operator of NGS must temporarily cease operation of all units at NGS.[33] Under all Alternatives, the operator must permanently cease operation of all units at NGS by December 22, 2044.

Under all TWG Alternatives, the operator of NGS must report to EPA annual emissions and heat input data and must make this information publicly available on its Web site. In addition, under TWG Alternative B, the operator must also submit to EPA annual Emission Reduction Plans projecting year-by-year emissions covering the 2020–2029 and 2030–2044 periods so that there is a plan for operation of NGS that ensures that cumulative emissions of $NO_X$ do not exceed the 2009–2029 $NO_X$ Cap and the 2009–2044 $NO_X$ Cap. Although year-by-year emissions projected in the annual Emission Reduction Plans are not enforceable (i.e., emissions in a given year are not required to match projections for that year in an Emission Reduction Plan), the requirement to submit Emission Reduction Plans is enforceable, and provides the operator with a framework for planning for future emissions reductions. The requirement also provides EPA and the public the opportunity to monitor and evaluate progress of emission reductions under TWG Alternative B.

TABLE 1—SUMMARY OF THE MAJOR REGULATORY PROVISIONS OF THE TWG ALTERNATIVE

| | | | | |
|---|---|---|---|---|
| Applicability | | | | |
| *(Step 1)* | • If LADWP and NV Energy both exit NGS without selling their ownership interests (i.e., retire shares), or both exit by selling to an existing NGS participant; or one retires shares and the other sells to an existing NGS participant; and | | | • If LADWP or NV Energy sells to a 3rd party, or does not exit NGS; |
| *(Step 2)* | • If Navajo Nation does not purchase ownership share by 12/31/19; | • If Navajo Nation purchases up to 170 MW by 12/31/19; and | • If Navajo Nation purchases up to 170 MW by 12/31/19; and | • n/a. |
| *(Step 3)* | • n/a | • If Participants increase capacity without triggering permit requirements; | • If Participants cannot increase capacity without triggering permitting); | • n/a. |
| Applicable Alternative | Then TWG Alternative A1 applies. | Then TWG Alternative A2 applies. | Then TWG Alternative A3 applies. | Then TWG Alternative B applies. |
| Applicable Requirements | • Comply with 2009–2044 $NO_X$ Cap of 494,899 tons.<br>• Permanently cease operation of all units if cumulative emissions before 2044 exceed 2009–2044 $NO_X$ Cap. | | | |

[31] See *Ariz. Public Serv. Co.* v. *EPA,* 562 F.3d 1116 (10th Cir. 2009).

[32] *Id.*

[33] The combination of the 2009–2044 and 2009–2029 $NO_X$ Caps under TWG Alternative B means that if NGS exceeds the 2009–2029 $NO_X$ Cap prior to 2029 it must cease operation, but the operator may re-start operation after 2030 as long as cumulative emissions have not yet exceeded the 2009–2044 $NO_X$ Cap.

TABLE 1—SUMMARY OF THE MAJOR REGULATORY PROVISIONS OF THE TWG ALTERNATIVE—Continued

| | | | | |
|---|---|---|---|---|
| | • Permanently cease conventional coal-fired electricity generation by December 22, 2044. | | | |
| Additional Emission Cap ... | • n/a | | | • Comply with 2009–2029 $NO_X$ Cap of 416,865 tons. |
| Specific Requirements * .... | • By 12/31/19 permanently close 1 unit.<br>• By 12/31/30 meet $NO_X$ limit of 0.07 lb/MMBtu on 2 units. | • By 12/31/19 permanently close 1 unit.<br>• By 12/31/19 operator may increase capacity by no more than 189 MW.<br>• By 12/31/30 meet 0.07 lb/MMBtu on 2 units. | • By 12/31/19 reduce net generating capacity by no less than 561 MW.<br>• By 12/31/30 meet $NO_X$ limit of 0.07 lb/MMBtu on 2 units. | • Temporarily cease operation if cumulative emissions before 2029 exceed 2009–2029 $NO_X$ Cap. |
| Reporting ..... | • By December 1, 2019, notify EPA of applicable Alternative (A1, A2, A3, or B).<br>• Submit annual report summarizing heat input and annual and cumulative emissions of $NO_X$.<br>• Make annual report publicly available on Web Site.<br>• Submit application to revise Part 71 Operating Permit by December 31, 2020. | | | |
| Additional Reporting ..... | • n/a | | | • By 12/31/19 and annually thereafter submit Emission Reduction Plans to project year-by-year emissions to assure compliance with $NO_X$ Caps. |

* All units must comply with the existing $NO_X$ emission limit of 0.24 lb/MMBtu established in a 2008 permitting action. See discussion in Proposed Rule at 78 FR 8284 (February 5, 2013). This limit applies to each unit unless otherwise stated.

In our final rule, EPA has included several revisions to the proposed regulatory text (40 CFR 49.5513(j)) put forth in the Supplemental Proposal. The substantive revisions include:

1. Revision to § 49.5513(j)(3) to clarify that EPA is finalizing a ''better than BART'' Alternative;

2. Additions to § 49.5513(j)(3) to specify that the operator must temporarily cease operation of NGS if cumulative emissions of $NO_X$ exceed the 2009–2029 $NO_X$ Cap of 416,865 tons at any time prior to December 31, 2029 (under Alternative B), and must permanently cease operation of NGS if cumulative emissions of $NO_X$ exceed the 2009–2044 $NO_X$ Cap of 494,899 tons at any time prior to December 31, 2044 (under all Alternatives);

3. Additions to § 49.5513(j)(3)(i)(A)(2), (B)(3), and (C)(2), to specify that the $NO_X$ emission limit of 0.07 lb/MMBtu is to be calculated based on a rolling average basis of 30 boiler operating days;

4. Correction to § 49.5513(j)(3)(ii)(D), to specify that Alternative B shall also apply if either of the Departing Participants (i.e., LADWP or NV Energy) remains as a participant in NGS;

5. Addition of § 49.5513(j)(3)(iii), consistent with the TWG Agreement, to require the owners of NGS to cease its operation of conventional coal-fired generation at NGS no later than December 22, 2044;[34]

6. Addition to § 49.5513(j)(4)(ii), to change the annual reporting date to begin in 2015 instead of the specific date of January 31, 2015, and specify that the report must be submitted to EPA and also made publicly-available within 30 days of the submittal deadline associated with the annual emission inventory required by the Part 71 Operating Permit for NGS;

7. Addition to § 49.5513(j)(4)(iii), to clarify that the Part 71 Operating Permit for NGS shall incorporate practically enforceable limits for $NO_X$ of 0.24 lb/MMBtu, on a 30-day rolling average basis, for each Unit equipped with LNB/SOFA, and 0.07 lb/MMBtu, on a rolling average basis of 30 boiler operating days, for each Unit equipped with SCR, as federally enforceable permit conditions; and

8. Addition of § 49.5513(j)(4)(iv)(C), to specify that the requirement to submit annual Emission Reduction Plans beginning no later than December 31, 2019, must be incorporated into the Part 71 Operating Permit for NGS as a federally enforceable permit condition.

9. Revision to § 49.5513(j)(7) to require the owner or operator of NGS to maintain records that document compliance with the $NO_X$ Cap (e.g., daily emissions and heat input data) for the life of the facility, rather than at least five years.

10. Deletion of § 49.5513(j)(7)(vi) that required record-keeping of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS because record-keeping of maintenance activities are not needed to ensure compliance with the 2009–2029 and 2009–2044 $NO_X$ Caps.

11. Revision to § 49.5513(j)(11) to state that the affirmative defense provisions of paragraphs § 49.5513 (c)(2) and § 49.5513(i) do not apply to paragraph § 49.5513(j).[35]

Revision (1) above is necessary to clarify that EPA is finalizing a ''better than BART'' alternative in lieu of BART.

[34] See page 14 of the TWG Agreement (section IV.F). This section of the TWG Agreement also states that ''[a]t its election, consistent with the Lease Amendment, the Navajo Nation may continue plant operations at NGS after December 22, 2044 consistent with EPA approval.'' EPA is not including this provision into the regulatory requirements at § 49.5513(j)(3)(iii), however, EPA expects that NGS would be substantially modified if the Navajo Nation elects to continue operation of the facility after NGS ceases conventional coal-fired generation in 2044, and that NGS must then meet all applicable regulatory and permitting requirements in existence at that time.

[35] We note that in our Supplemental Proposal, we reported the affirmative defense provisions as paragraphs (c)(1) and (g)(3) in error. The correct citations are to paragraph (c)(2) and paragraph (i) of 40 CFR 49.5513.

The BART Benchmark used to assess the ''better than BART'' alternative is based on our proposed BART determination for NGS, and the ''better than BART'' alternative is consistent with our Supplemental Proposal of the TWG Alternative. Revision (3) above is necessary because EPA inadvertently did not specify the averaging period associated with the emission limits for $NO_X$ in our Supplemental Proposal. Revisions (2) and (4) through (10) above are in response to comments submitted to EPA on our Supplemental Proposal. Revision (11) above amends a proposed provision in our Supplemental Proposal that limited the applicability of the existing affirmative defense provisions for startups, shutdowns, and malfunctions (from the previous FIP for NGS codified at 40 CFR 49.5513(c)(2) and 40 CFR 49.5513(i)) to malfunctions.[36] In this Final Action, we are revising (j)(11) to make clear that the existing affirmative defense provisions do not apply to the emission limits established in the TWG Alternative.

Following the close of the public comment period, the United States Court of Appeals for the DC Circuit issued a decision concerning various aspects of the NESHAP for Portland cement plants issued by EPA in 2013, including the affirmative defense provision of that rule.[37] The court found that EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts lies exclusively with the courts, not EPA. The court did not address whether such an affirmative defense provision could be properly included in a SIP. However, the court's holding makes it clear that the CAA does not authorize promulgation of such a provision by EPA. In particular, the court's decision turned on an analysis of CAA sections 113 (Federal enforcement) and 304 (Citizen suits). These provisions apply with equal force to a civil action brought to enforce the provisions of a FIP. The logic of the court's decision thus applies to the promulgation of a FIP and precludes EPA from including an affirmative defense provision in a FIP. Therefore, we are not including an affirmative defense provision in the final FIP.

We note that, if a source is unable to comply with emission standards as a result of a malfunction, EPA may use case-by-case enforcement discretion, as appropriate. Further, as the DC Circuit recognized, in an EPA or citizen enforcement action the court has the discretion to consider any defense raised and determine whether penalties are appropriate.[38]

## IV. Summary of Major Issues Raised by Commenters

The public comment period for our Proposed Rule opened on February 5, 2013. On two occasions, we extended the comment period on our Proposed Rule at the request of stakeholders, with a final closing date of January 6, 2014. Although we posted the pre-publication version of our Supplemental Proposal to the docket and to our Web site on September 25, 2013, the public comment period for the Supplemental Proposal officially began when it was published in the **Federal Register** on October 22, 2013.[39] We accepted public comments on our Supplemental Proposal, concurrently with our Proposed Rule, until January 6, 2014. Our Supplemental Proposal also included notice of five public hearings, one on the Navajo Nation, one on the Hopi reservation and three in the State of Arizona. The public hearings occurred during the week of November 12, 2013. In all, 194 oral testimonies were presented at the public hearings.

We received over 77,000 written comments. Of these, over 76,800 comments came from private individuals who submitted substantially similar comments by email or postcard. We received an additional 300 unique written comments (not including duplicates, requests for extension of the public comment period, or requests for additional hearings) from a variety of individuals and entities, including tribal governments, environmental or public interest advocacy groups, water interest groups, groups representing industry or commerce, the operator and participants in NGS and the Kayenta Mine, elected officials, and state and local governments.

In this document, EPA is providing an abbreviated summary of the major comments and EPA's responses to those comments, grouped together by subject matter. The complete response to comments document (RTC) includes the full summary of all substantive comments and EPA's full responses to those comments. The RTC is included in the docket for this rulemaking.[40] We are not responding to comments unrelated to our Proposed Rule or Supplemental Proposal for NGS in this document or in the RTC.

### *A. General Comments From Public Hearings*

*Comment: Contribution of NGS to the local and state economy and support for TWG Alternative*

Many commenters at the public hearings preferred the TWG Alternative because they believe that EPA's proposed BART determination would force NGS and the Kayenta Mine to close, causing economic harm to an area where the majority of residents are low-income and where opportunities for employment are limited. Many commenters stressed that NGS employs over 500 people and the Kayenta Mine has over 400 employees, and the loss of these jobs would only exacerbate the unemployment rate in the area, which currently ranges from 47 percent to 60 percent.

A number of commenters noted that NGS supplies more than 90 percent of the energy used by Central Arizona Water Conservation District (CAWCD), which operates the Central Arizona Project (CAP), which transfers water from the Colorado River throughout Arizona. A few commenters urged EPA to uphold its federal trust obligations and ensure that tribal communities continue to have access to affordable water, and advised EPA to make a decision consistent with the legal rights that the Gila River Indian Community and other stakeholders negotiated and that Congress granted under the Arizona Water Settlements Act of 2004.

A few commenters support the TWG Alternative because they believe it is a fair compromise created by a diverse group of stakeholders that provides a path for future operation at NGS by allowing for potential ownership changes and by providing an extension to install SCR technology, while still ensuring that the total emission reductions of $NO_X$ will be greater than those achieved under EPA's proposed BART determination.

*Response:* EPA recognizes the contribution of NGS and the Kayenta Mine to the economy of the Navajo Nation, the Hopi Tribe, the city of Page, and the state of Arizona. In our Proposed Rule, EPA discussed the history of NGS and the relationship between NGS, the Central Arizona Project, and numerous tribes located in

[36] See final action for the previous FIP for NGS at 75 FR 10179 (March 5, 2010).

[37] *NRDC* v. *EPA,* 2014 U.S. App. LEXIS 7281 (D.C. Cir.), in the docket for this rulemaking.

[38] *Id.* at 24 (arguments that violations were caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises).

[39] See document number 0182 (Pre-publication version of Supplemental Proposal for NGS Signed on September 25, 2013), posted to docket on September 25, 2013 and publication of Supplemental Proposal in **Federal Register** at 78 FR 62509 (October 22, 2013).

[40] See document titled ''EPA Responses to Comments on Final Rule for NGS'' in the docket for this rule.

Arizona.[41] EPA notes that NGS is a facility that is subject to the BART requirement of the RHR, and emissions from NGS affect visibility at 11 national parks and wilderness areas in the Southwest. The analyses in our Proposed Rule and Supplemental Proposal determined that additional controls at NGS are cost-effective, will significantly reduce the contribution of NGS to visibility impairment at numerous Class I areas, and should not cause NGS to retire. However, for a number of reasons, including the importance of NGS to numerous Indian tribes located in Arizona and the federal government's reliance on NGS to meet the requirements of water settlements with several tribes, EPA also outlined a framework for considering ''better than BART'' alternatives that ensures emission reductions while providing additional flexibility to the operator of NGS.[42]

EPA agrees with comments that the TWG Agreement represents a compromise between diverse stakeholders, although we recognize that the members of the TWG did not invite all affected stakeholders to participate in their discussions. The TWG Alternative provides certainty for future operation of NGS, flexibility in the compliance timeframe, and more emission reductions of $NO_X$ than would have been achieved under EPA's proposed BART determination. Based on our analysis in our Supplemental Proposal and consideration of all comments received, EPA is taking action to finalize requirements consistent with the TWG Agreement we put forth in our Supplemental Proposal, i.e., the TWG Alternative.

*Comment: Impact of air pollutants from NGS on public health and welfare and support for proposed BART determination.*

Several commenters favor EPA's proposed BART determination for NGS because they believe that emissions from NGS cause health problems in the area, including respiratory illness and heart disease. One commenter cited a Clean Air Task Force study which states that NGS is responsible for approximately $127 million in health costs every year. Many of these commenters urged EPA to conduct health studies to determine the actual impact to health in these communities.

Some commenters favor stringent controls because they believe that emissions from NGS adversely affect native plant species and harm traditional dry land farming. Others assert that emissions from NGS can be linked to high levels of mercury found in fish species located in nearby lakes. Many commenters expressed concerns over the well-being of the Navajo Aquifer. A number of commenters favor stringent controls because they believe that emissions produced from NGS contribute to climate change.

In contrast, a few commenters questioned the extent to which emissions from NGS impact public health and the environment, asserting that the haze is a result of emissions from natural sources (e.g., volcanoes, wind/dust storms, and forest fires) and pollution produced from nearby cities (i.e., Phoenix, Los Angeles, and Las Vegas). Another commenter asserted that EPA's Web site states that vehicles are the largest producers of $NO_X$ emissions in the country and concludes that EPA is ignoring mobile sources and unfairly targeting stationary sources.

Some commenters preferred EPA's proposed BART determination over the TWG Alternative because they believe that the alternative is based on a false premise. They asserted that the closure of a single unit is not equivalent to cleaning up all three units because the reduction in capacity will ultimately require new electricity generation elsewhere because the demand for power does not change.

*Response:* Protection of human health and the environment is EPA's mission and forms the basis for many Agency actions, including establishing the National Ambient Air Quality Standards (NAAQS), and promulgation of regulations such as the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP). In addition to Clean Air Act requirements to protect human health, in the 1977 Clean Air Act Amendments, Congress declared as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution (See CAA § 169A).

EPA agrees that visibility-impairing pollutants are among the same pollutants that affect human and ecosystem health; however, health studies are beyond the scope of this BART analysis. Similarly, hazardous air pollutants (HAPs), such as mercury, are not visibility-impairing pollutants and therefore are beyond the scope of this BART analysis.[43]

EPA agrees that climate change is an important issue.[44] However, the RHR addresses pollutants that impair visibility and is not intended to address pollutants that contribute to climate change. EPA has developed various programs and activities to address emissions of greenhouse gases.[45] On June 2, 2014, EPA signed a proposal to cut greenhouse gas emissions from coal-fired power plants by up to 30 percent by 2030.[46] Although regulation of greenhouse gases is conducted under separate statutory requirements from regional haze, EPA is mindful that this BART determination for NGS is not the only regulatory program that affects this facility and the region.

EPA agrees with comments that mining and combustion of coal affect the environment. EPA notes that Reclamation has started its process to develop an Environmental Impact Statement (EIS) required under the National Environmental Protection Act (NEPA) for activities resulting from the continued operation of NGS and the Kayenta Mine.[47] The on-going NEPA process provides numerous opportunities and the appropriate forum to raise concerns related to the impacts of mining and use of water from the Navajo Aquifer. We further note that representatives of DOI attended all the public hearings on NGS held by EPA and are aware of the issues raised by commenters during the BART process regarding mining and the Navajo Aquifer.

EPA disagrees with the assertion that EPA is unfairly targeting stationary sources of emissions and ignoring the significant contribution of motor vehicle emissions. Consistent with title II of the CAA, the EPA Office of Transportation and Air Quality protects public health and air quality by, among other things, regulating air pollution from motor vehicles, engines, and the fuels to operate them.[48] New cars and sport utility vehicles sold today have emission levels of hydrocarbons, $NO_X$, and carbon monoxide that are 98–99 percent lower than new vehicles sold in the 1960s on a per mile basis.[49] Similarly, standards established for heavy-duty highway and non-road

[41] See 78 FR 8274, at 8275 (February 5, 2013).

[42] *Id.* and 78 FR 62509 (October 22, 2013).

[43] Emissions of HAPs from various source categories are addressed generally through the NESHAP. EPA addressed mercury emissions from power plants specifically in the final Mercury and Air Toxics Standard (MATS). 77 FR 9304 (February 16, 2012).

[44] *http://www.epa.gov/climatechange/basics/.*

[45] *http://www.epa.gov/climatechange/EPAactivities.html.*

[46] See *http://www2.epa.gov/carbon-pollution-standards.*

[47] For more information, please see *www.ngskmc-eis.net.*

[48] *http://www.epa.gov/otaq/.*

[49] See, e.g., 76 FR 74854, at 74900 (December 1, 2011).

sources require emission rate reductions on the order of 90 percent or more for particulate matter and $NO_X$. In 2014, EPA finalized new vehicle emission standards and reduced the fuel sulfur content of gasoline to achieve additional reductions in tailpipe and evaporative emissions from passenger cars, light-duty vehicles, medium-duty passenger cars, and some heavy-duty vehicles starting in 2017.[50]

EPA agrees that forest fires and volcanic eruptions, when they occur, can impact visibility to a greater extent than anthropogenic sources of emissions. However, Congress directed EPA to develop rules to address on-going emissions from stationary sources subject to BART to remedy the existing impairment of visibility in Class I areas and restore visibility to natural conditions.

EPA disagrees with assertions that the TWG Alternative is based on a false premise because the closure or curtailment of one unit would just result in electricity being produced elsewhere. Closure of one unit at NGS or the curtailment of an equivalent amount of electricity generation is possible based on LADWP and NV Energy's intended divestiture from NGS. Consistent with state law in California and Nevada, additional electricity needed to replace lost generation from NGS, associated with LADWP and NV Energy's divestiture, would come from energy sources that emit less air pollution than a conventional coal-fired power plant operating with SCR on all units.[51]

Comments regarding specific aspects of the TWG Alternative are discussed in Section 9.0 of the RTC.

*Comment: Environmental and Social Justice.*

Several commenters consider the presence of NGS and several other power plants in and around the Navajo Nation to represent an environmental and economic justice issue. One commenter noted that a Navajo water hauler in Kaibeto, a Navajo community near Page, pays 10 to 20 times more for water, or $13,000 per acre foot, than municipal CAP water users in Glendale or a farmer in Tempe, who pay $551 and $41 per acre feet, respectively.

Several commenters opined that the leaders of the Navajo Nation and EPA have not protected the interests of the local population. A few expressed concerns over how the alternatives were written, noting that many tribal residents do not understand the technical language used in the documents and therefore cannot adequately comment on the validity of the alternatives proposed. Some commenters argued that pollution can be controlled using existing technology and EPA should apply the same standard to NGS as other coal-burning power plants (e.g., Four Corners Power Plant). A few commenters argued that extending the compliance timeframe for NGS demonstrates that the federal government considers itself exempt from federal law. Several argued that tribal communities do not have the funds to develop proposals and/or conduct environmental assessments and urged that EPA uphold federal trust responsibilities and create an equal playing field.

*Response:* EPA defines Environmental Justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across the country. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.'' [52]

EPA takes fair treatment and meaningful involvement seriously and provided numerous opportunities for tribal governments, environmental and tribal non-governmental organizations, and other interested stakeholders to provide input in the development of our Proposed Rule, Supplemental Proposal, and Final Rule for NGS. EPA began our public involvement process for a BART determination for NGS in 2009, when we published an Advanced Notice of Proposed Rulemaking (ANPR). Although we initially provided a 30-day public comment period, at the request of tribal governments and other interested stakeholders, we extended the comment period for tribes another 30 days to October 28, 2009 and, to allow additional time for government-to-government consultation on NGS, agreed to accept comments from tribes until March 1, 2010.

EPA received over 6,000 comments on the ANPR.[53] During 2009 through 2012, EPA met with various stakeholders, including tribal governments and tribal environmental groups, to discuss NGS and hear concerns related to a BART determination for this facility.[54] We initially provided a 90-day comment period for the Proposed Rule on February 5, 2013, and at the request of various stakeholders, we provided several extensions of the public comment period, which closed on January 6, 2014. During the 11-month comment period, EPA continued to meet with stakeholders, at their request, to discuss our proposed BART determination for NGS and our framework for ''better than BART'' alternatives.[55]

On July 26, 2013, the TWG submitted Appendix B to the TWG Agreement to EPA for consideration. EPA posted the TWG Agreement to our docket on the same day to provide the public an opportunity to review it.[56] On September 25, 2013, EPA posted our Supplemental Proposal, along with supporting documents, to the docket to allow for pre-publication review by interested parties.[57] The Supplemental Proposal was published in the **Federal Register** on October 22, 2013. The comment period for the Supplemental Proposal closed on the same day as the BART proposal, on January 6, 2014. The Supplemental Proposal also included notice of five open house and public hearing events EPA scheduled throughout Arizona in November 2013. The open houses allowed members of the public an opportunity to talk with representatives from EPA and ask questions. EPA held events at the LeChee Chapter House, located on the Navajo Nation, as well as in Page, Arizona, and provided oral interpretation services between English and Diné (the Navajo language). EPA also held an event at the Hopi Day School, located in Kykotsmovi, the seat of the Hopi tribal government.[58] Finally, we also held events in Phoenix and in Tucson, Arizona, to allow stakeholders in central and southern Arizona, representing CAP water interests and several tribes receiving CAP water, the opportunity to provide comment and talk with representatives from EPA. Although EPA understands that the TSD

[50] See Fact Sheet for Tier 3 Standards available at *http://www.epa.gov/otaq/documents/tier3/420f14010.pdf.*

[51] See RTC and references therein.

[52] *http://www.epa.gov/environmentaljustice/.*

[53] See page 25 of the TSD to the February 5, 2013 Proposed Rule.

[54] See, for example document number 0232 in the ANPR docket at EPA–R09–OAR–2009–0598, and document numbers 0008 and 0009 in the docket for this rule.

[55] See, for example, document number 0150, 0152, 0166, 0173, 0302, and 0303 in the docket for this rule.

[56] See document number 0122 in docket for this rule.

[57] See document numbers 0182, 0183, and 0184 in the docket for this rule.

[58] EPA engaged with the government of the Hopi Tribe to search for an oral interpreter between English and the Hopi language, but the Hopi Tribe was unable to locate anyone to provide those services.

and **Federal Register** notices include technical information that may be difficult to understand, EPA provided Fact Sheets and handouts, written in plain language, at the open house and public hearing events.[59] EPA representatives were also present at the events to discuss and explain our Proposals. EPA recognizes that many tribal communities do not have the funds to develop alternative proposals or hire experts on their behalf; however, this does not diminish such communities' ability to participate in the rulemaking process in a meaningful way as EPA takes seriously its responsibility to explain its proposal to all interested parties and assesses all comments, regardless of the form of the comment or whether or not the commenter has a technical background.

As stated in our Proposed Rule and Supplemental Proposal, EPA has determined that these proposed rules, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations (i.e., require emission reductions from NGS).[60] EPA recognizes that some commenters may view the timeframe for compliance under EPA's framework for BART Alternatives as an environmental justice issue. We note that the LNB/SOFA credit, an important component of the extended timeframe, was based on real, actual emission reductions beginning in 2009 that were voluntary and not required by any rule or regulation. We also note that the TWG Alternative, which calls for closure of one unit in 2019 (or equivalent curtailment) will result not only in greater reductions of $NO_X$ than would have been achieved under BART, but also reductions of several other pollutants, including $SO_2$, PM, $CO_2$, and mercury. Thus, although the TWG Alternative includes a compliance timeframe for achieving additional reductions in 2030, over 2009–2044, the TWG Alternative will result in reductions of additional pollutants that affect visibility or human health, and will provide an enforceable mechanism to ensure that NGS ceases conventional coal-fired electricity generation at NGS by the end of 2044.

EPA recognizes that numerous commenters expressed frustration regarding social inequities related to costs and benefits of coal mining and combustion and water availability and cost. We recommend participating in the EIS process for NGS and Kayenta Mine to raise any concerns related to costs, benefits, and the environmental and social justice of coal mining and coal combustion at the Kayenta Mine and NGS.

*B. Comments on Factor 1—Cost of Controls*

*Comment: EPA underestimated SCR costs.*

Several commenters asserted that EPA underestimated the cost of compliance by improperly reworking cost estimates developed for SRP by Sargent and Lundy (S&L) in 2010 and disregarding real costs that would be incurred. One commenter quoted the BART Guidelines and the final RHR to assert that although the use of the Control Cost Manual is encouraged, it is not mandated, and that EPA has discretion to use additional sources of cost information. The commenter believes, therefore, that the SRP estimates for the excluded cost items are appropriate to use because they are more precise than the generic statements that EPA relied upon in the Control Cost Manual.

*Response:* EPA disagrees with the comment that we improperly reworked and underestimated the SCR cost estimates. We note, however, that even if we had relied only on the cost estimate provided by SRP, EPA still would have concluded that SCR is cost-effective at NGS.

EPA used a hybrid approach for our cost analysis that relied primarily on the cost estimates provided by SRP, but also followed the BART Guidelines to determine whether S&L included cost estimates for services or equipment associated with SCR that were not allowed under the EPA Control Cost Manual. The BART guidelines state ''[i]n order to maintain and improve consistency, cost estimates should be based on the OAQPS Control Cost Manual, where possible''.[61] The capital cost estimate EPA presented in the proposed rulemaking for SCR plus LNB/SOFA ($541 million total for Units 1–3) is only 8 percent lower than the SRP cost estimate ($589 million). SRP's cost estimate would not have changed our conclusion that SCR is cost-effective at NGS.

As discussed in the TSD to the proposed rulemaking, EPA made four adjustments to SRP's cost estimates for SCR, namely, to exclude ''Owners Construction Management, O&M Support and Contract Service,'' ''Owners Legal Support and Insurance,'' and ''Allowance for Funds Used During Construction,'' and to use an interest rate of 7 percent.[62] Our detailed, line-by-line analysis was included in the docket for this proposed rulemaking and provided an explanation for why we retained, modified, or rejected each line item.[63] Please see the RTC for additional discussion of these four adjustments to the S&L cost analysis.

In our proposed rule, we presented total capital and total annual cost estimates from EPA and SRP, as well as average and incremental cost-effectiveness values based on EPA and SRP assumptions for total annual cost and total annual $NO_X$ reductions. Based on SRP's analysis, average cost-effectiveness of SCR+LNB/SOFA at NGS was less than $3,000 per ton and incremental cost-effectiveness of SCR+LNB/SOFA (compared to SNCR+LNB/SOFA) was approximately $5,300 per ton.[64] EPA stated that the cost-effectiveness values calculated by both EPA and SRP for SCR+LNB/SOFA are lower than or within the range of other BART evaluations where EPA or a state has determined that SCR is BART (ranging from approximately $2,000 to $6,000 per ton). EPA has accordingly determined that SCR is cost-effective at NGS.[65] Therefore, even if EPA accepted the S&L cost estimates submitted by SRP, as commenters suggest, EPA would still have determined that SCR is cost-effective for NGS.

*Comment: EPA overestimated SCR costs.*

One commenter asserted that EPA overestimated the cost of installing SCR at NGS. Although the commenter supported EPA's adjustments to the S&L cost estimates, the commenter asserted that further revisions are appropriate. The commenter stated that EPA overestimated the following costs: Outage costs associated with installation and ''preinstallation'' work; catalyst costs; and auxiliary power. In addition, the commenter asserted that EPA overestimated annual costs by assuming 20 years as the basis for amortizing costs and using an inflated interest rate of 7 percent.

Although the commenter concurs with EPA's conclusion that SCR plus LNB/SOFA is cost-effective at $2,240

[59] See document 0219 in the docket for this rule.

[60] See discussions under Executive Order 12898 in 78 FR 8793 (February 5, 2013) and 78 FR 62520 (October 22, 2013).

[61] The OAQPS Control Cost Manual is now referred to as the EPA Control Cost Manual.

[62] See Table 12 of the TSD to the February 5, 2013 Proposed Rulemaking, available as document number 0014 in the docket for this rule.

[63] See MS Excel document titled ''EPA cost analysis for NGS'' within document number 0004 in the docket for this rule.

[64] See Table 3 of our Proposed Rule, 78 FR 8281 (February 5, 2013).

[65] See our Proposed Rule at 78 FR 8281 (February 5, 2013).

per ton of $NO_X$ removed, the commenter re-calculated cost-effectiveness to be $1,412 per ton for Unit 1, $1,331 per ton for Unit 2, and $1,497 per ton for Unit 3.

*Response:* EPA disagrees with the commenter that any revisions to EPA's estimate of SCR costs are necessary. Even if some of the costs projected by S&L and used by EPA may be overestimated (e.g., the commenter points primarily to capital recovery, catalyst replacement costs, and costs for lost power generation), EPA disagrees that we must correct every issue of concern raised by the commenters in order to support our determination of the BART Benchmark. EPA made four specific corrections to the estimates provided by S&L and SRP to make the cost calculation methodology consistent with methodologies used for BART cost calculations nationally.[66] As noted in other responses even if we consider the average and incremental cost effectiveness of SCR using SRP and S&L's full cost projections, EPA would still determine that SCR at NGS is cost-effective. The cost-effectiveness values cited by the commenter, below $1,500 per ton, certainly suggest that SCR could be even more cost-effective than the values we relied upon in our proposal, but this would not change our overall determination that SCR is cost-effective for NGS.

*Comment: Updated SCR cost estimate from SRP.*

SRP contracted with S&L in 2013 to review and update the SCR cost estimates that were prepared in 2010. S&L escalated costs for inflation, and incorporated other minor adjustments to reflect a lower $NO_X$ design target. SRP's revised capital cost estimates for SCR installation on all three units total $650 million (in 2013 dollars) compared to SRP's 2010 cost estimate of $544 million.

*Response:* EPA reviewed the updated 2013 cost estimates developed by S&L and provided by SRP.[67] In its 2013 cost report, S&L explains that it escalated labor and material costs, and updated cost estimates based on a revised design target of 0.03 lb/MMBtu (so that the SCR system is deployed as a 3+1 system rather than a 2+2 catalyst layer system), and other design features, including a low-load temperature control system to operate SCR at lower loads. S&L escalated several costs at rates above 6.7 or 8 percent (e.g., freight, scaffolding). S&L did not make any revisions to the components of variable annual costs, including maintenance labor, auxiliary power, steam, and catalyst replacement. To be consistent with the cost estimates in our Proposed Rule, EPA accepted most of the line item costs as adjusted by S&L and made the same four adjustments to the 2013 cost estimates as we had applied to the 2010 cost estimates. These changes result in an 8 percent difference in total capital costs of SCR between EPA's 2013 estimate and SRP's 2013 estimate and a 21 percent difference in the total annual costs of SCR between the 2013 estimates from EPA and SRP (see Table 2).

TABLE 2—COST ESTIMATES FOR SCR IN 2010 AND 2013 DOLLARS

| | Total capital cost (million) in 2010$ | Total capital cost (million) in 2013$ | Total annual cost (million) in 2010$ | Total annual cost (million) in 2013$ |
|---|---|---|---|---|
| EPA Estimate | $496 | $598 | $59 | $69 |
| SRP Estimate | 544 | 650 | 75 | 88 |

In our proposed BART determination, EPA also presented the average and incremental cost-effectiveness of controls, based on the combination of combustion controls (LNB/SOFA) and post-combustion controls (i.e., SNCR or SCR). Therefore, cost-effectiveness values presented in our Proposed Rule were based on total annual cost of SCR in combination with annual cost of LNB/SOFA (SCR+LNB/SOFA), SNCR in combination with LNB/SOFA (SNCR+LNB/SOFA) or LNB/SOFA alone.[68] Based on the updated 2013 cost estimates for SCR, Table 3 shows the average and incremental cost-effectiveness of controls, in both 2010 and 2013 dollars, based on EPA and SRP assumptions for total annual cost and annual $NO_X$ reductions achieved by SCR. See RTC for further detail on cost-effectiveness of SNCR+LNB/SOFA and LNB/SOFA.

TABLE 3—COST EFFECTIVENESS OF CONTROLS IN 2010 AND 2013 DOLLARS

| | 2010 $ | | 2013 $ | |
|---|---|---|---|---|
| | EPA | SRP | EPA | SRP |
| SCR+ LNB/SOFA: | | | | |
| Total Annual Cost* | $67.5 million | $80.2 million | $74.4 million | $92.6 million. |
| Annual $NO_X$ reduced (tpy) | 28,573 | 26,180 | 28,573 | 26,180. |
| $NO_X$ Limit (lb/MMBtu) | 0.055 | 0.080 | 0.055 | 0.080. |
| Average Cost Effectiveness ($/ton) | $2,369 | $3,069 | $2,605 | $3,537. |
| Incremental Cost Effectiveness (vs. LNB/SOFA) ($/ton). | $3,522 | $4,889 | $3,899 | $5,695. |
| Incremental Cost Effectiveness (vs. SNCR+LNB/SOFA) ($/ton). | $3,239 | $5,357 | $3,798 | $6,647. |

* EPA's cost effectiveness calculations represent SCR in combination with LNB/SOFA, rather than SCR alone.

Based on the revised 2013 cost estimates for SCR+LNB/SOFA, the revised average cost-effectiveness of SCR+LNB/SOFA is roughly 10 percent higher (based on EPA's estimates) than the average cost-effectiveness values

[66] See, e.g., Final Regional Haze Plan for Arizona (Phase 1) at 77 FR 72512 at 72531 (December 5, 2012); Final Regional Haze Plan for North Dakota at 77 FR 20894 at 20916–17 (April 16, 2012); Final Regional Haze Plan for New Mexico at 76 FR 52388 at 52399–52400 (August 22, 2011); Final Regional Haze Plan for Wyoming at 79 FR 5032 at 5082 (January 30, 2014).

[67] See RTC and references therein.

[68] 78 FR 8281, February 5, 2013.

reported in our Proposed Rule, and roughly 15 percent higher based on SRP's estimates.[69] The 2013 values for average cost-effectiveness of SCR+LNB/SOFA based on EPA and SRP estimates are still comparable to the range of values determined cost-effective for SCR in other BART determinations. For these reasons, EPA continues to consider SCR+LNB/SOFA as cost-effective at NGS.

*Comment: Cost-Effectiveness of Presumptive BART.*

One commenter stated that in establishing presumptive limits in the BART Guidelines, EPA recognized that SCR is not cost-effective and that combustion controls such as LNB/SOFA represent the most cost-effective control options for most boiler types. The commenter pointed out that in establishing presumptive limits, EPA considered controls that cost less than $1,500 per ton to be cost-effective, and that the cost-effectiveness for SCR at NGS, which ranges from $3,000 to $6,000 per ton based on 2010 estimates, is well above this threshold. The commenter concluded that EPA should have rejected SCR and proposed LNB/SOFA as BART for NGS.

*Response:* EPA disagrees with the assertion that the BART Guidelines established a threshold for cost-effectiveness against which all future BART determinations must compare. In developing the presumptive $NO_X$ limits for BART in 2005, EPA did not set the cost-effectiveness values estimated for combustion controls as the threshold for determining whether a given control technology was or was not cost-effective. If EPA had intended the cost-effectiveness values estimated in 2005 to represent a threshold for BART, it is reasonable to assume that the BART Guidelines would have included those cost-effectiveness values as thresholds in Appendix Y, and would have required future cost estimates to be presented in 2005 dollars for appropriate comparison to the thresholds. The BART Guidelines do not set a numerical definition for ''cost-effective'', and the analysis of presumptive limits uses cost-effectiveness as a means to broadly compare control technologies, not as a threshold for rejecting controls for an individual unit or facility that exceed the average cost-effectiveness of combustion controls. In addition, as discussed in the RTC, a value of $1,500 per ton is not an appropriate or relevant value for determining cost-effectiveness.

*Comment: Indirect costs should also be considered under Factor 1.*

The Gila River Indian Community asserted that EPA conducted the analysis of cost-effectiveness incorrectly by not including the indirect costs of the requirements and only considering the direct cost of the requirements. The commenter stated that EPA did not give sufficient consideration to the high costs to tribes associated with indirect impacts of its proposed BART determination.

*Response:* EPA disagrees with the assertion that our cost-effectiveness analysis was incorrect because it did not include indirect costs in the assessment of the costs of compliance. The BART Guidelines, which States and EPA must follow in BART determinations for fossil-fuel fired power plants greater than 750 MW,[70] focus on the direct costs of the pollution control equipment and other capital and annual costs associated with the control technology alternatives. The BART Guidelines do not require consideration of the cost of potential indirect effects of BART control options when assessing the costs of compliance. Therefore, EPA disagrees that our analysis for Factor 1 was incorrect or incomplete because it did not include indirect costs to tribes. EPA further notes that under Factor 2, the energy and non-air quality environmental impacts analysis, the BART Guidelines specifically require the energy impact analysis to consider direct energy impacts (e.g., parasitic load from certain control technologies) and to generally exclude indirect energy impacts of controls (e.g., energy to produce raw materials for construction of control equipment) unless the indirect impact is unusual or significant.

However, because of the unique relationship between NGS, tribes, and tribal water settlement agreements, and to inform our government-to-government consultation with tribes, EPA did consider potential indirect effects of control options to tribes under Factor 2. EPA quantified the impact to electricity rates and CAP water rates, and also assessed whether installation of SCR would result in electricity generation costs at NGS that exceed the cost to purchase power on the wholesale market. Therefore, although EPA appropriately did not consider indirect costs in our analysis of Factor 1, EPA did include consideration of indirect impacts to tribes and other entities in our analysis of Factor 2.

*C. Comments on Factor 2—Energy and Non-Air Quality Environmental Impacts, Including Economic Impacts*

*Comment: EPA's Affordability Analysis relied on invalid assumptions.*

One commenter submitted a report, prepared by Management Information Services, Inc. (MISI report), asserting that EPA made several assumptions that underestimated the cost of continuing to operate NGS with additional controls, including the assumption that no new capital would be deployed at NGS over the next 25 years, the assumption that the increase in the annual NGS lease cost would be $15 million per year (which is lower than actual increase in lease cost of $43 million per year that was released after publication of our Proposed Rule), and the use of EPA's capital cost estimates for SCR instead of the cost estimated by S&L.

Other commenters asserted that EPA underestimated the cost of closing NGS and purchasing power on the wholesale market, by not accounting for costs associated with stranded investments and decommissioning NGS.

*Response:* EPA recognizes the economic importance of NGS to the State of Arizona, the Navajo Nation, and the Hopi Tribe. The purpose of the Affordability Analysis in our docket was to determine whether the control options for BART would have a detrimental impact on the competitiveness of NGS in the western power market, affecting whether the NGS owners would continue to operate NGS or replace NGS generation with less expensive market power. The Affordability Analysis indicated that, even if SCR installation was required on all three units at NGS, power produced at NGS would remain less expensive than the cost to replace power through wholesale purchases. Because utilities will generally provide power to their customers in a least-cost manner and because NGS, with the installation and operation of SCR, remained the less expensive option, EPA determined that the operation and installation of SCR, in and of itself, was not likely to force NGS to close.

In response to multiple comments expressing concern related to simplifying assumptions or outdated data, EPA updated the Affordability Analysis with the most current power market price curves from the U.S. Energy Information Administration (EIA) and recent forward power market prices in March 2014 and other more current modeling variables. These

[69] For informational purposes, EPA included the incremental cost-effectiveness values of SCR+LNB/SOFA (estimated in 2010 and 2013) compared to LNB/SOFA and SNCR+LNB/SOFA, but we note that a comparison of the percent change in incremental cost-effectiveness between 2010 and 2013 is not informative because SRP did not provide updated cost estimates (in 2013 dollars) for the other control technologies.

[70] 40 CFR 51.308(e)(1)(ii)(B).

revisions are discussed in more detail in the RTC as well as in additional supporting documents.[71] The updated model results, comparing the net present value (NPV) of electricity generation costs with air pollution controls installed compared to the costs to purchase an equivalent amount of power on the wholesale market, are summarized in the RTC. Overall, the combined changes do not change the conclusions from the original Affordability Analysis that installing and operating SCR at NGS would be less costly than closing NGS and purchasing replacement power from the wholesale market.

*Comment: EPA's failure to appropriately consider the impacts to non-Indian agricultural (NIA) water users renders its Factor 2 analysis arbitrary, capricious, and an abuse of discretion.*

One commenter stated that, as a result of errors and omissions, EPA's Factor 2 analysis is arbitrary, capricious, and an abuse of discretion. The commenter asserted that there are several problems with the EPA analysis related to NIA users of CAP water, including erroneous assumptions, insufficient support for conclusions, failure to consider decreased farming profitability and increased unemployment, failure to acknowledge the inability of NIA water users to pass along cost increases as compared to municipal users, and other factors.

*Response:* EPA recognizes that CAP water is an important resource for NIA and other users of water in Arizona. As a result, as one of a number of discretionary analyses EPA conducted on the indirect impacts on major stakeholders, EPA calculated water rate increases to NIA users of CAP water and municipal and industrial users of CAP water.

EPA disagrees that our discussion of impacts to NIA users of CAP water renders our Factor 2 analysis arbitrary, capricious, and an abuse of discretion. Neither the CAA nor the BART Guidelines require consideration of indirect costs or indirect impacts of controls in a BART analysis. EPA, nevertheless, included an evaluation of impacts to some of the major stakeholders in NGS in our BART analysis under Factor 2, including NIA users, as consistent with the statement in the BART Guidelines that ''the energy impacts analysis *may* consider . . . whether a given alternative would result in significant economic disruption or unemployment'' (emphasis added).[72]

EPA recognizes that the information we had available to us about NIA users of CAP water was limited, and we acknowledged in the TSD to our Proposed Rule that we had several questions about CAP and groundwater availability to NIA water users. EPA appreciates the clarifications and additional information provided by NIA users of CAP water during the comment period for our proposals. The additional information provided during the comment period about NIA users of CAP water does not change our conclusion under Factor 2, that the potential economic impacts to tribes argue for flexibility in the compliance timeframe for NGS, because this compliance flexibility also benefits other stakeholders, including the NIA users of CAP water.

*Comment: EPA must evaluate cumulative economic impact of other rulemakings.*

One commenter asserted that the BART proposal must take into account the context in which the regional haze rules are being implemented and conduct a cumulative impact analysis of all EPA rulemakings. The commenter noted that the two remaining copper smelters in Arizona are already subject to BART for $SO_2$ and they also have to make significant capital investments to comply with other regulatory programs and initiatives such as the revised $SO_2$ NAAQS.

*Response:* EPA disagrees with the assertion that we must consider the total cost impact of all EPA regulatory requirements in a BART analysis. EPA recognizes that other facilities, whose water and electricity rates may be affected by our BART determination for NGS, may also be subject to BART for their own emissions of visibility-impairing pollutants. As a general matter, EPA is mindful that facilities may be affected by multiple regulatory and program activities. We note that BART is a case-by-case determination that is based on a source-specific analysis of five factors, which include considerations of the unique circumstances of each affected facility, as required under the CAA.

*Comment: Impact to the Development Fund.*

One commenter stated that the increased cost of electricity generation associated with SCR would reduce the competitiveness of the price of NGS power on the wholesale market and therefore reduce the revenue that flows into the Development Fund.

*Response:* As discussed in our Proposal Rule and TSD, EPA recognizes that any electricity owned by Reclamation based on its 24.3 percent participation in NGS that is not used by CAP is sold and revenues are deposited into the Development Fund.[73] This fund is authorized to pay the delivery portion of the cost of CAP water for certain Indian tribes and to pay the cost of constructing delivery systems to bring CAP water to certain Indian tribes.[74] EPA considers the potential economic impacts to tribes, including potential impacts to the Development Fund, as part of BART factor 2 to support the appropriateness of flexibility in the compliance timeframe for NGS.

*Comment: No basis for public health claim.*

One commenter asserted that EPA has no basis for claiming that the $NO_X$ reductions from NGS would lead to a public health benefit. The commenter noted that EPA establishes NAAQS at levels that are protective of public health and welfare with an adequate margin of safety that accounts for sensitive populations such as children and the elderly, and that EPA has never found that any of the areas around NGS fail to attain the NAAQS. The commenter asserted that EPA must conduct a health risk evaluation that follows the four basic steps of the risk assessment process: Hazard identification, dose-response, exposure assessment, and risk characterization.

*Response:* EPA agrees that the purpose of this rule is to reduce visibility impairment caused by emissions of $NO_X$ from NGS. EPA has not conducted a health risk evaluation for this rulemaking that attempts to characterize or quantify a public health benefit. Because $NO_X$ is itself a criteria pollutant that affects public health and is also a precursor to ozone and fine particulate matter, which are also criteria pollutants that affect public health, we consider it reasonable to state that other benefits could exist. We also note that EPA does not agree that there are no health benefits from reductions in ozone and fine particulate matter below the level of the NAAQS. On the contrary, EPA's practice of quantifying these benefits in regulatory impact assessments has been strongly supported by peer-reviewed science.[75]

[71] See RTC and references therein.

[72] See BART Guidelines at 70 FR 39169 (July 6, 2005).

[73] See Proposed Rule at 78 FR 8282 (February 5, 2013) and TSD at pages 71–72.

[74] See Proposed Rule at 78 FR 8283 (February 5, 2013).

[75] See EPA, 2010, ''Summary of Expert Opinions on the Existence of a Threshold in the Concentration-Response Function for $PM_{2.5}$-related

*D. Comments on Factor 3—Existing Controls at NGS*

*Comment: EPA failed to consider existing controls.*

Based on EPA's statement in the Proposed Rule that the early installation of LNB/SOFA would not influence EPA's BART determination and EPA's use of a baseline scenario in the visibility modeling that did not include LNB/SOFA, the operator of the Kayenta Mine concluded that EPA failed to consider existing controls.

*Response:* EPA disagrees with the assertion that we failed to consider existing controls. As described in our Proposed Rule and consistent with the BART Guidelines (directing BART determinations to conduct the five-factor analysis generally using a 2001–2003 baseline) EPA evaluated LNB/SOFA as a separate control technology in our BART analysis, as well as a technology that can be used in combination with post-combustion control technologies (i.e., SNCR and SCR).[76] We also discussed the voluntary installation of LNB/SOFA in 2009–2011 under Factor 3: Existing Controls at NGS.[77]

As discussed in section 8.5 of the RTC, EPA properly considered baseline emissions over the period 2001–2003 in our analysis of cost-effectiveness and anticipated visibility benefits of controls. Therefore, although we did not ''consider existing controls'' in the exact manner preferred by the commenter, we appropriately considered the existence of LNB/SOFA in Factor 3 of our BART analysis. In addition, the ''better than BART'' framework that we used to assess and finalize BART alternatives explicitly accounts for the existing LNB/SOFA.

*Comment: EPA should determine existing controls to be BART.*

Several commenters noted that NGS spent millions of dollars on LNB/SOFA to reduce $NO_X$ emissions to levels below the presumptive $NO_X$ emission levels in the BART Guidelines.

One commenter stated that installing LNB/SOFA prior to a requirement to do so under the RHR or any other CAA requirement has resulted in greater total $NO_X$ emission reductions in the first regional haze planning period than would be required by the most stringent EPA BART determination.

*Response:* EPA recognizes that the early and voluntary installation of LNB/SOFA on one unit per year in 2009–2011 at NGS resulted in significant emission reductions from NGS. EPA agrees that the early installation of LNB/SOFA on one unit per year was voluntary and resulted in significant $NO_X$ reductions in the first planning period for Regional Haze. However, based on our five-factor analysis, we have determined that SCR+LNB/SOFA is also cost-effective and would result in significant additional visibility improvement at a number of Class I areas. We therefore disagree that LNB/SOFA should be determined BART for NGS.

*E. Comments on Factor 5—Anticipated Visibility Benefits*

*Comment: General Comments on Visibility.*

Numerous commenters questioned the extent to which NGS impacts visibility at Class I areas or disputed EPA's analysis that installation of SCR at NGS would improve visibility. Many commenters asserted that the haze is produced from emissions from other sources.

Some commenters stated that the wind near and around the Grand Canyon blows predominantly west to east; thus, emissions from the NGS are pushed away from several Class I areas, not towards them.

*Response:* We are aware of the studies cited by commenters purporting to show that controls on NGS would yield little visibility improvement, and we address them in section 7.0 of the RTC. We are also aware of work performed by the Western Regional Air Partnership (WRAP) suggesting that the relative contribution of nitrate from point sources to visibility impacts is relatively small.[78] The CAA and RHR require that BART be installed on certain old, large stationary sources as part of the overall approach to improving visibility at Class I areas. No control at an individual source will be sufficient to meet the goal of remedying existing impairment of visibility in mandatory class I Federal areas which result from manmade air pollution, as set out in section 169A of the CAA.

On the issue of wind direction, we note that the CALPUFF modeling uses three years of hourly meteorological input, which is based on meteorological modeling as well as observational data from stations throughout a large area. The input includes wind speed and direction, and would include the particular wind direction patterns noted by the commenter. The more sophisticated meteorological treatment in CALPUFF enables it to track the pollutant plume from NGS, including its twists and turns over multiple days. We consider this approach to adequately account for variability in winds noted by the commenter.

*Comment: EPA underestimated visibility benefits of SCR.*

One commenter stated that the visibility benefits of SCR are greater than those modeled by EPA because EPA underestimated SCR performance and because EPA overestimated the potential increase in sulfate emissions that may come with the addition of SCR controls by assuming an $SO_2$ to $SO_3$ conversion rate that is too high and using an erroneous value for the coal sulfur content. The commenter stated that its own modeling shows greater visibility improvement than demonstrated by EPA.

*Response:* We disagree that EPA underestimated the visibility benefits of SCR and we note that the commenter's assertion that the visibility benefits are even better would not change our proposed determination under Factor 5 that the anticipated visibility benefits of SCR+LNB/SOFA are significant and support our proposed BART limit for $NO_X$, achievable with SCR+LNB/SOFA. Please see the RTC for a detailed discussion of EPA's responses to the commenter's specific assertions.

*Comment: EPA overestimated visibility impact of NGS by using background ammonia concentrations that were too high.*

Several commenters argued that EPA's assumed ammonia background concentration of 1 part per billion (ppb), the default value recommended by the Interagency Workgroup on Air Quality Modeling (IWAQM), is unrealistically high compared to measured values in the area, resulting in artificially high model projections of visibility impacts, particularly in the winter.[79] The commenter noted that the use of a constant value of 1.0 ppb for background ammonia concentration fails to account for known variations in monthly or seasonal ammonia concentration.

One commenter cited an analysis conducted on behalf of SRP by AECOM and Dr. Ivar Tombach. The commenter stated that the Tombach study compared modeled predictions of

Mortality Technical Support Document.'' Available from *http://www.epa.gov/ttn/ecas/regdata/Benefits/thresholdstsd.pdf.*

[76] See Proposed Rule at 78 FR 8280, 8284 and 8285 (February 5, 2013).

[77] *Id.* at 8284.

[78] See, *e.g.* WRAP PM Source Apportionment Technology (PSAT) results, available on WRAP Technical Support System, Source Apportionment Web page at *http://vista.cira.colostate.edu/TSS/Results/SA.aspx.*

[79] *Interagency Workgroup On Air Quality Modeling (IWAQM) Phase 2 Summary Report And Recommendations For Modeling Long Range Transport Impacts* (EPA–454/R–98–019), EPA OAQPS, December 1998, *http://www.epa.gov/scram001/7thconf/calpuff/phase2.pdf.*

ammonium nitrates using both EPA's and AECOM's ammonia background concentrations to measured ammonia values, demonstrating that the EPA's assumptions over-predict actual measured values by a factor of 10 or more in some cases.

One commenter noted that when the IWAQM guidance was issued 14 years ago, CALPUFF did not have the capability of accommodating monthly ammonia background concentrations as it has since been updated to do. The commenter asserted that EPA's reliance on a constant value is an outdated approach.

*Response:* EPA has already considered and addressed the same arguments and data provided by commenters related to background ammonia concentrations in other rulemakings, including our final rule for Four Corners Power Plant.[80] As summarized briefly below, EPA disagrees that our use of the IWAQM default background ammonia concentration for arid areas of 1 ppb was inappropriate. Please see the RTC for the full response to this comment.

We have carefully reviewed the comments and concluded that, on balance, the evidence does not support using lower values for background ammonia concentrations, as argued by the commenters, in estimating the visibility impacts from NGS. Much of the existing measured data cited by the commenters is from other states and may not be representative for evaluating visibility impacts from NGS.[81] Further, existing data sometimes represent ammonia alone rather than total ammonia and ammonium. Because ammonium represents part of the pool of ammonia that could be available to interact with the $SO_2$ and $NO_X$ emitted from stationary sources, it should be accounted for in the value for background ammonia concentrations used in the model. In several of the research papers cited by commenters, the amount of measured ammonium is comparable to and at times much greater than the amount of ammonia.[82] Measurements made by SRP closer to NGS over December 2009 to April 2010, which included ammonia and ammonium, showed that depending on time and location, typical ammonia concentrations ranged from 0.2 ppb to 0.8 ppb and the concentration of total ammonia and ammonium ranged from 0.6 to 1.2 ppb, which is considerably higher than the 0.2 ppb winter values used in SRP's modeling.[83] Although some of the ammonium may not be available to interact with pollutants from NGS, the sum of ammonia and ammonium provides an upper bound estimate of background ammonia concentrations, and represents a conservative estimate for modeling.

We further note that there are measurements of gaseous ammonia alone that show concentrations close to or greater than the concentration of 1 ppb, even in winter when ammonia concentrations are expected to be lowest. Winter measurements, representing 3-week averages, ranged from 1.1 ppb to 1.8 ppb at a monitor at the Farmington Airport in northwestern New Mexico.[84] Measurements from the winters of 2011–2013 from the AMoN network ranged from 1.1 to 1.3 ppb for Farmington, and 0.7–0.9 ppb for Chiricahua, in southeastern Arizona.[85]

We further note that there is significant variability in the concentrations of ammonia measured at different times and places. Even the SRP monitoring report (Tombach & Paine, 2010, cited above) describes a surprisingly high spatial variability in ammonia concentrations. Because of the variability and its unknown causes, the data collected for SRP did not lead to a clear picture of appropriate and representative background ammonia concentrations to use with CALPUFF.

Finally, we note that using the background ammonia concentrations recommended by commenters does not change our conclusion under Factor 5 because CALPUFF modeling of SCR shows substantial visibility benefits even using the alternative assumptions.[86] Using a background ammonia concentration of 1 ppb ammonia, EPA modeled the greatest benefit from SCR+LNB/SOFA to be 5.4 deciviews at Capitol Reef NP, and modeled a visibility benefit exceeding 1 to 2 deciviews at ten additional Class I areas. Using the ammonia concentration recommended by some commenters (ranging from 0.2 ppb in winter to 1.0 ppb in summer), EPA modeled the greatest benefit of SCR to be 2.3 dv, and modeled a visibility benefit exceeding 1 deciview at nine Class I areas, with three of these nine areas having a benefit of approximately two deciviews. Even assuming a lower ammonia concentration, the modeling demonstrates that the installation of SCR+LNB/SOFA at NGS would have a significant beneficial impact on visibility at a number of Class I areas. Our conclusion as to the appropriate BART Benchmark for NGS would not accordingly change.

*Comment: EPA should have used an updated version of CALPUFF.*

Several commenters asserted that EPA erred in using CALPUFF version 5.8 in its modeling rather than the more recent CALPUFF version 6.42, released by TRC. One commenter argued that CALPUFF version 6.42 predicts lower visibility benefits than version 5.8.

*Response:* We disagree with the commenters that a new CALPUFF version should be used for the BART determination. We relied on version 5.8 of CALPUFF because it is the version approved by EPA through a public notice and comment rulemaking, in accordance with the Guideline on Air Quality Models (''GAQM'', 40 CFR part 51, Appendix W, section 6.2.1.e).[87] CALPUFF version 6.4 is not approved by EPA for regulatory purposes, and we do not agree that the changes made to this most recent version of CALPUFF were simple model updates to address bugs. A full evaluation of a new model such as CALPUFF version 6.4 is needed before it should be used for regulatory purposes as errors that are not immediately apparent can be introduced along with new model features.

*Comment: Closure of Mohave Project did not improve visibility and shows CALPUFF is unreliable.*

One commenter discussed the findings of an analysis conducted after the closure of the Mohave Power Project (MPP) (a 1,580 MW coal-fired power plant) to evaluate whether the closure had resulted in improved visibility in Grand Canyon National Park.[88] The commenter indicated that although CALPUFF version 5.8 modeling predicted that the plant had a significant impact on visibility in the Grand Canyon, this study concluded that there was ''virtually no evidence that the MPP closure improved visibility in the Grand Canyon.'' The commenter asserted that this study raises questions about the reliability of CALPUFF.

*Response:* We disagree that the Terhorst & Berkman (T&B) study cited by the commenters raises questions about CALPUFF's reliability. The

[80] See RTC and references therein.

[81] See e.g., SRP comments Appendix G, ''Measurements of Ambient Background Ammonia on the Colorado Plateau and Visibility Modeling Implications'', Prepared by Salt River Project, Contributors: Ivar Tombach and Robert Paine, September 2010. Referred to here as ''SRP monitoring report'', or Tombach & Paine 2010.

[82] See RTC and references therein.

[83] SRP monitoring report, or Tombach & Paine 2010, and SRP comments Appendix C. ''Revised BART Analysis for the Navajo Generation Station Units 1–3'' (January 2009) and Appendix I. ''Visibility Modeling Using Upgraded CALPUFF Model'' (February 2011).

[84] See RTC and references therein.

[85] *Id.*

[86] See RTC and references therein.

[87] See RTC and references therein.

[88] See RTC and references therein.

conclusion in the T&B study on the effect of MPP closure is actually similar to that from earlier analyses, which also predicted improvements less than the human perceptibility threshold of 1 dv. A response to the T&B study written by White *et al.,* stated that the T&B analysis is ''misleadingly presented as discrediting previous studies and their interpretation by regulators. In reality the T&B analysis validates a consensus on MPP's visibility impact that was established years before its closure.'' [89]

White *et al.,* explicitly addressed the purported disagreement between the T&B methodology and results from CALPUFF, pointing out that the comparison was flawed in several ways. First, the ambient data relied upon by T&B are collected only every third day; this results in an insufficient number of days for a valid statistical comparison to the 98th percentile results reported from CALPUFF. Another important flaw is that when T&B translated visibility extinction into deciviews, they used recent polluted conditions as the background for comparison, whereas the BART Guidelines and the CALPUFF results use natural conditions as background.[90] When the T&B results are computed using natural background, they are substantially larger, and generally in agreement with CALPUFF results.

*F. Comments on BART Determination for $NO_X$*

*Comment: BART limit for NGS should be 0.04 lb/MMBtu.*

One commenter argued that the final BART emission limit should be more stringent and no higher than 0.04 lb/MMBtu. The comment noted that permitting authorities have required lower $NO_X$ limits than 0.055 lb/MMBtu in recent BACT determinations based on SCR in combination with combustion controls.

*Response:* EPA disagrees with the commenter that the BART Benchmark for NGS should be 0.04 lb/MMBtu. We note that the commenter has not provided any specific information to show that NGS could demonstrate continuous compliance with an emission limit of 0.04 lb/MMBtu. The commenter generally argued that SCR systems are typically designed to achieve 90 percent removal. EPA notes that although an SCR system can be designed to a specific target, the design target is typically not equivalent to the actual emission limit.[91] EPA proposed a limit of 0.055 lb/MMBtu achievable with SCR+LNB/SOFA, and using a baseline emission rate of 0.35 lb/MMBtu, this represents a removal efficiency of 84 percent.[92] However, as noted elsewhere in the RTC, the limit of 0.055 lb/MMBtu, which accommodates startup, shutdown, and low-load operation, is based on a design target of 0.03 lb/MMBtu. This represents a design target removal efficiency of 91 percent for SCR+LNB/SOFA (from a baseline of 0.35 lb/MMBtu), or 88 percent for SCR alone (i.e., from 0.24 lb/MMBtu).

EPA disagrees with the commenter's assertion that emission limits associated with BART must meet BACT or the lowest emission rate ever achieved with that technology at any coal-fired power plant. The BART Guidelines state that: ''[i]n assessing the capability of the control alternative, latitude exists to consider special circumstances pertinent to the specific source under review, or regarding the prior application of the control alternative'', (70 FR 39166) and that ''[t]o complete the BART process, you must establish enforceable emission limits that reflect the BART requirements . . .'' (70 FR 39172). The five-factor BART analysis described in the Guidelines is a case-by-case analysis that considers site specific factors in assessing the best technology for continuous emission controls. After a technology is determined as BART, the BART Guidelines require establishment of an emission limit that reflects the BART requirements, but does not specify that the emission limit must represent the maximum level of control achieved by the technology selected as BART. For these reasons, EPA is not using the lower limit recommended by the commenter in setting the BART Benchmark.

*Comment: BART limit for NGS should be in the range of 0.07–0.08 lb/MMBtu.*

Several commenters asserted that the $NO_X$ emission limit EPA proposed for NGS is unachievable. One commenter noted that the averaging period for the proposed limit of 0.055 lb/MMBtu includes periods when the SCR is unable to operate such as startup, shutdown, and periods of load-cycling. The commenter made the following arguments: (1) The S&L analysis submitted by the commenter shows that the proposed emission limit is unachievable on a continuous basis; (2) the $NO_X$ emissions achieved in other SCR retrofit situations do not justify the proposed emission limit.

*Response:* EPA disagrees with the commenter that the limit used in setting the BART Benchmark for NGS should be higher than our proposed limit of 0.055 lb/MMBtu, in the range of 0.07 to 0.08 lb/MMBtu.[93]

The S&L report generally argues that because the emission limit is established based on a 30–BOD average basis, the proposed emission limit of 0.055 lb/MMBtu is not consistently achievable at NGS. The S&L analysis is based on a design target of 0.03 lb/MMBtu and suggests an emission limit in the range of 0.07–0.08 lb/MMBtu would be required to accommodate periods of load-cycling operation, startups, and shutdowns. S&L is recommending a limit that is 2.3 to 2.7 times higher than the design target, or a compliance margin of 133 to 167 percent.

The S&L report discusses the temperature limitations associated with SCR and explains that at temperatures below a specific minimum operating temperature, a component of the SCR system (i.e., ammonia injection) must cease to prevent ammonium salt formation on the catalyst. S&L asserts that a minimum operating temperature of 580 °F is typical for retrofit SCR control systems installed on coal-fired electric generating units with similar coal sulfur content and states that this temperature corresponds with a gross load of approximately 650 MW (650 gross MW, or MWg). S&L further assumes that SRP will likely modify the units to increase flue gas temperatures at lower operating loads by installing one of several options for low load temperature control. In their analysis, S&L assumes the low load temperature control would be achieved with a water-side bypass (to allow water to bypass the economizer tube bundles during low-load operation). The S&L report

[89] W.H. White, R.J. Farber, W.C. Malm, M. Nuttall, M.L. Pitchford, B.A. Schichtel, *Comment on ''Effect of coal-fired power generation on visibility in a nearby national park (Terhorst and Berkman, 2010)'',* Atmospheric Environment 55 (2012) 173–178. doi:10.1016/j.atmosenv.2012.02.076. Also available at: *http://www.dri.edu/marc-pitchford?showall=&start=2.*

[90] EPA considered and rejected comments on the proposed BART Guidelines that visibility impacts should be evaluated relative to current degraded visibility conditions and concluded that ''[u]sing existing conditions as the baseline for single source visibility impact determinations would create the following paradox: The dirtier the existing air, the less likely it would be that any control is required.'' (70 FR 39104 at 39124, July 6, 2005).

[91] EPA's Environmental Appeals Board has recognized that PSD emission limits must be set to allow fluctuations in operations, stating: ''To account for these possibilities, a permitting authority must be allowed a certain degree of discretion to set the emissions limitation at a level that does not necessarily reflect the highest possible control efficiency, but will allow the permittee to achieve compliance consistently.'' In Re Masonite Corporation, 5 E.A.D. 551, 560–61 (1994).

[92] See RTC and references therein.

[93] The response included in this Final Rule is abbreviated and excludes the graphs and tables EPA generated to support our response. For additional detail, please see the RTC.

states ''[b]ased on a preliminary review of the available systems, a water-side bypass system should be capable of increasing the temperature of the bulk flue gas by approximately 25 °F to 65 °F during low-load operation. For this evaluation, a low-load temperature control system capable of achieving a temperature increase of 65 °F during low-load operations was assumed for modeling purposes.'' S&L further estimates that this would correspond to a minimum gross load of 450 MWg for the SCR to operate, or operation at 55 percent capacity.

Using the assumption that the SCR would not operate at loads below 450 MWg, S&L used 2012 operations data at NGS to estimate emission rates at NGS assuming a design target of 0.03 lb/MMBtu with actual steady-state operations achieving 0.04 lb/MMBtu. S&L modeled eighteen different operating scenarios and identified seven scenarios, which included periods of low load cycling along with unit startup and shutdowns, that resulted in the maximum 30–BOD average for each unit and facility-wide, that exceeded 0.055 lb/MMBtu. The highest 30–BOD average S&L modeled was 0.077 lb/MMBtu for Unit 2, achieved under 3 different operating scenarios involving low-load cycling.

SRP and S&L did not provide the underlying data used in the S&L analysis. Therefore, EPA evaluated the S&L report by reviewing emissions data from the EPA Air Markets Program Data (AMPD) for multiple years, as well as emissions data from other facilities that were constructed or retrofit with SCR. EPA sought to understand 2012 operations at NGS within the context of longer term operational trends at the facility, as well as understand the minimum operating load assumed by S&L for NGS within the context of minimum operating loads at other facilities with SCR.

EPA evaluated the reported hourly gross load operating data for Units 1–3 at NGS for the years 2001, 2003, 2010, 2011, 2012, and 2013.[94] Emission data from AMPD show that NGS, and in particular, Unit 2, spent a higher percentage of operating hours at gross loads below 450 MWg in 2012 compared to other years. The 2012 gross load profiles for Unit 2 (as well as Units 1 and 3) are characteristic of load-cycling units, with significant periods of time below the purported SCR minimum operating load of 450 MWg, particularly in the spring. Please see the RTC for more detail. In 2010, Unit 2 also operated for significant periods of time at loads below 450 MWg. However, these periods in 2010 occurred following the major outage on Unit 2 (following installation of LNB/SOFA on that unit). Although Units 1–3 at NGS did appear to operate as load-cycling units and operated below 450 MWg for significant periods of time in 2012, this type of operation does not appear to be characteristic of typical operation at NGS, based on our evaluation of previous years, as well as 2013.

Based on the gross load operating profiles for six years, EPA estimated the rolling 30–BOD averages for each BOD to determine whether the operating profiles (which included actual startup, shutdown, and load-cycling in each year) would result in 30–BOD averages that would exceed 0.055 lb/MMBtu. Based on our analysis, EPA projected the highest 30–BOD average to be 0.079 lb/MMBtu (Unit 2 in 2010). Using 2012 data, representative of load-cycling operation, EPA projected the highest 30–BOD average to also occur on Unit 2 (0.075 lb/MMBtu). Similarly, S&L projected the highest 30–BOD average in 2012 was from Unit 2, at 0.077 lb/MMBtu. Therefore, although the scenarios modeled by S&L and EPA were not identical, the highest 30–BOD averages projected by EPA and S&L, using similar starting assumptions, were comparable. Our analysis, of projected SCR performance, which included emission and operating profiles of actual startup and shutdown events, and load-cycling in various years, showed that Unit 3 was not projected to exceed 0.055 lb/MMBtu in any of the evaluated years, and that there were several years within these six selected years that Units 1 and 2 would also not exceed 0.055 lb/MMBtu.

The analysis of projected 30–BOD average emission rates assumes that S&L's value of 450 MWg (or 55 percent capacity) for the minimum operating load to operate SCR at NGS is correct. EPA notes that 450 MWg was a value that S&L assumed based on preliminary analysis of available low load temperature control systems. SRP submitted a similar S&L analysis to EPA for Units 1 and 3 at Coronado Generating Station (CGS).[95] Units 1 and 2 at CGS are 430 MWg Riley-Turbo units that typically operate as load-cycling units. CGS burns low-sulfur coal from the Powder River Basin (PRB coal). With the application of low-load temperature controls on these units, S&L's analysis suggests that the minimum operation load for SCR on Units 1 and 2 at CGS would be 138 MWg (or 32 percent capacity). This is significantly lower than the 55 percent capacity S&L assumed for NGS. S&L stated that the coal sulfur content will affect the minimum operating load for SCR. NGS does not burn PRB coal; however, NGS does burn low-sulfur coal from the Kayenta Mine. AECOM, SRP's consultant for visibility modeling, reported the maximum sulfur content of the coal as 0.593 percent based on daily data for the 2001–2003 period. For comparison, various sources reference PRB coal as generally low-sulfur coal with a sulfur content of less than 1 percent, or a mean of 0.5 percent.[96] In contrast, high sulfur coal is typically above 3 percent.[97]

EPA evaluated emission data of eight well-performing units burning PRB coal and generated empirical estimates for minimum operating loads and capacity requirements for SCR operation at those facilities. Based on this analysis (see RTC for further detail), EPA estimated capacity requirements for SCR operation that ranged from 35 percent to 46 percent, with an average value of 40 percent. Using the average (40 percent) and the maximum (46 percent) capacity requirement to operate SCR, EPA projected that NGS would meet a limit of 0.055 lb/MMBtu (on a 30–BOD average) for all but 3 cases (i.e., Units 1 and 2 in 2012, and Unit 2 in 2010) under the 46 percent capacity requirement. Under the 40 percent capacity requirement to run SCR, Units 1 and 2 in 2012 would remain below 0.055 lb/MMBtu and for Unit 2 in 2012 the highest 30–BOD average was projected to be exactly 0.055 lb/MMBtu. Operation of Unit 2 in 2010 was not typical of normal operation. Please see RTC for more detail on this analysis.

The S&L report concludes that even with a design target for SCR of 0.03 lb/MMBtu, a limit of 0.07–0.08 lb/MMBtu is required to accommodate periods of startup, shutdown, and load-cycling operation. EPA agrees that load-cycling operation appears to be an important factor; however, EPA concludes that the critical S&L assumption, that the units at NGS must operate at approximately 55 percent capacity in order for the SCR to operate, was not sufficiently supported and was acknowledged by S&L to be an assumption based on a preliminary review of available low-load temperature control systems. EPA also notes that in the S&L revised 2013 cost analysis, S&L included costs for hot water recirculation systems which

[94] See RTC and references therein.

[95] See RTC and references therein.

[96] See, for example, publication from the U.S. Geological Survey, figure PQ–4 and Table PQ–1, available at *http://pubs.usgs.gov/pp/p1625a/Chapters/PQ.pdf.*

[97] *Id.*

''maintains SCR in operation at *all* plant operating loads'' (emphasis added).[98]

In summary, EPA is finalizing a BART Benchmark based on an emission limit for NGS of 0.055 lb/MMBtu on a rolling 30–BOD basis. In determining the achievability of this limit, EPA has conducted an analysis that considers actual periods of startup, shutdown, and low-load cycling. Based on the understanding that S&L would design the SCR system at NGS to a design target of 0.03 lb/MMBtu, the BART limit of 0.055 lb/MMBtu represents an adequate compliance margin to accommodate periods of startup, shutdown, and load-cycling operation.

*Comment: Presumptive Limit for $NO_X$.*

Several commenters noted that with existing LNB/SOFA controls, NGS emits $NO_X$ at rates below the presumptive limit of 0.28 lb/MMBtu established by the EPA in the BART Guidelines. A commenter stated that to properly justify departure from the presumptive BART limit, EPA must evaluate the impacts of the presumptive BART limit in its five-factor analysis.

*Response:* EPA disagrees with the comment that installation of LNB/SOFA at NGS should satisfy BART simply because it meets the presumptive limit for $NO_X$ of 0.28 lb/MMBtu in the BART Guidelines for tangential-fired boilers burning bituminous coal. Presumptive BART limits, and the corresponding technology upon which those limits are based, do not preclude states or EPA from setting limits that differ from those presumptions based on case-specific consideration of the relevant BART factors. The presumptive limits generally represent a minimum level of control for BART for various types of power plants, based on EPA's assessment of the typical costs of controls and likely visibility benefits.[99] EPA further disagrees with the assertion that we did not evaluate the impacts of the presumptive BART limit in our five-factor analysis. The presumptive BART limit of 0.28 lb/MMBtu is based on the installation and operation of modern combustion controls. EPA evaluated LNB/SOFA (at a limit of 0.24 lb/MMBtu, which is each unit's existing permitted $NO_X$ limit for operation with LNB/SOFA) in the five-factor analysis on which our proposed rule was based. Please see our RTC for a detailed discussion.

*Comment: Install SCR within 3.5 years.*

One commenter stated that the CAA requirement for BART to be installed ''as expeditiously as practicable'' requires installation and full implementation of SCR on all three units at NGS within 3.5 years rather than five years. The commenter stated that EPA provided no site-specific factors at NGS that would require a longer-than-average installation time for SCR (particularly in light of the fact that it appears contractors in the region will not be overwhelmed).

*Response:* EPA disagrees with the commenter that a 3.5-year compliance deadline for the installation of SCR would be practicable for NGS. EPA agrees that there are numerous sources of information, including EPA's response to comments on its BART determination for SJGS, to suggest that on average, the time required to design and construct an SCR system can range from 37 to 43 months. The commenter also cites EPA documents suggesting that it generally takes 21 months to design, install, and test one SCR unit, and 35 months for SCR installation at power plants with multiple SCR units, and another publication that suggests that SCR can be installed in less than five years (i.e., document from The Brattle Group). Our RTC contains a detailed discussion of our conclusion that the Brattle Group estimate of 47 months (nearly 4 years) applies to one unit, not multiple units at one facility.[100]

In addition, although EPA cited one facility where the retrofit of seven units required 35 months, EPA also stated ''ideally, longer than 35 months would allow for all the retrofits to occur over a period of several years so that facility owners can properly plan outages and suppliers can properly plan for resource availability.'' [101]

The commenter also states that ''it appears contractors in the region will not be overwhelmed'' to justify why installation time for SCR should not be longer than average.[102] We note that ''installation time'' is one part of compliance, and that EPA must also consider time for design, procurement, and permitting. We also note that the commenter did not provide any support for its statement that contractors in the region will not be overwhelmed. We note that several EGUs in the southwest have compliance dates for the installation of SCR around 2018.[103] Therefore, EPA anticipates that leading up to 2018, numerous coal-fired EGUs in the region will be retrofited with post-combustion controls.

In taking action to finalize a BART Benchmark, EPA is retaining the five year compliance period as proposed. Because BART compliance at NGS involves the design, procurement, and installation of SCR on three units and upcoming ownership changes at NGS as discussed in our proposed rule, EPA is determining that a five-year BART compliance timeframe at NGS is as expeditious as practicable. This is within the range cited by the commenters and the facility operator (i.e., average of 21 to 47 months per unit, or 35 months to 67 months for multiple units at one facility) and is consistent with the CAA which requires BART compliance as expeditiously as practicable but no later than five years following the effective date of the final rule.[104]

*G. Comments on BART for PM*

*Comment: Support/opposition for finding not to establish PM BART.*

Several commenters supported EPA's statement in the Proposed Rule that ''[b]ecause emissions of PM are well controlled at NGS through federally enforceable limits, EPA is not proposing that it is ''necessary or appropriate'' under the TAR to determine BART for PM emissions at NGS.''

Some commenters noted that implementation of the Mercury and Air Toxics Standards (MATS) in the near future will establish an additional federally enforceable limit for PM of 0.03 lb/MMBtu. The commenters added that the BART Guidelines provide that one can generally rely on MACT standards for purposes of BART.

In contrast, two commenters asserted that EPA was incorrect to determine that it need not evaluate BART for control of PM at NGS. The commenter asserts that the existing PM limit of 0.06 lb/MMBtu was not based on a BART analysis and does not reflect a well-controlled PM emission rate for a coal-fired EGU.

One commenter asserted that the electrostatic precipitators (ESPs) at NGS do not represent the best system of control for PM. The commenter believes that EPA's determination is inconsistent with recent BART and BACT

[98] See page 1–2 of the Sargent and Lundy report prepared for SRP, dated January 2, 2014, included as Appendix U to the SRP comment letter in the docket for this rulemaking.

[99] See 77 FR 14604, 14608–14610 (March 12, 2012) for a detailed discussion of the presumptive limits.

[100] See May 2012 Brattle Group document, page 12 and page 17, in the docket for this rule.

[101] See EPA 2002 Multipollutant Strategies document, page 22, in the docket for this rule.

[102] See page 17 of the EarthJustice comment letter, in the docket for this rule.

[103] See Final BART FIP for Four Corners Power Plant an compliance dates under the BART Alternative at 77 FR 51620 at 51648 (August 24, 2012) and Final Regional Haze FIP for Arizona (phase 1) at 77 FR 72512 at 72578 (December 5, 2012).

[104] See section 169A of the CAA (sections 169A(b)(2)(A) and (g)(4)).

determinations for coal-fired utility boilers that set emissions limits for PM of 0.015 lb/MMBtu or lower based on the use of fabric filter baghouses. The commenter concluded that EPA should revise its determination and complete a BART analysis for PM that includes evaluation of fabric filter baghouses.

*Response:* EPA agrees with the comment that it is not necessary or appropriate to require BART for PM emissions from NGS at this time. As we stated in our proposed rule: ''Emissions of PM and $SO_2$ are controlled by hot-side electrostatic precipitators (HS–ESPs) and wet scrubbers, respectively.'' [105] Because NGS will be required to comply with the PM emissions limits in the MATS rule, EPA continues to find that it is not necessary or appropriate at this time to promulgate a BART emission limit for PM from NGS. EPA is not determining that the existing PM emission limit for NGS is BART. Instead, it is EPA's position that it is not necessary or appropriate under our discretionary authority under the TAR, promulgated at 40 CFR 49.11, to conduct a BART determination for PM emissions because they are currently well-controlled and will be further reduced by compliance with the 0.03 lb/MMBtu emission limit in the MATS rule.

One commenter asserted that EPA should require fabric filter baghouses as BART for PM. EPA cannot agree or disagree that baghouses would be required as BART for PM because, as described above, we have determined that it is not necessary or appropriate at this time to conduct a BART determination for PM at NGS.

*H. Comments on BART for $SO_2$*

*Comment: Support for finding that Reasonable Progress is met for $SO_2$.*

Several commenters noted that EPA recognized in the Proposed Rule that the emission limits EPA established for $SO_2$ in 1991 were determined to achieve greater reasonable progress than would BART. Several commenters agreed that no additional emission limits or controls should be required as a result of BART for $SO_2$ emissions. One commenter noted that the existing $SO_2$ limit at NGS is more stringent than the BART Guidelines' presumptive $SO_2$ limit.

*Response:* EPA agrees with these comments. As EPA stated in our proposal in February 2013, the $SO_2$ emissions limit established in EPA's 1991 $SO_2$ FIP was determined to be better than BART under the visibility regulations addressing reasonably attributable visibility impairment. Specifically, EPA determined that promulgating a $SO_2$ emission limit of 0.10 lb/MMBtu on an annual average basis would result in greater cumulative $SO_2$ emissions reductions and visibility improvement over time than would the $SO_2$ BART limit that EPA had proposed for NGS. NGS installed a wet flue gas desulfurization system to reduce $SO_2$ emissions on each of its boilers in 1997–1999.[106]

*I. Comments on EPA's BART Alternative*

*Comment: Support for EPA's authority for ''better than BART.''*

Several commenters discussed and supported EPA's policy and legal rationale for its discretion to approve ''better than BART'' alternatives and to provide an extended period for implementation of such an alternative at NGS. One commenter also opined that the 5-year compliance period for BART that is defined in section 169A(g)(4) of the CAA applies by its terms only to: (1) SIPs, by providing that the BART compliance date shall be no later than ''*five years after the date of approval of a plan revision under this section'';* and (2) FIPs promulgated under CAA section 110(c), by providing that the BART compliance date under any such FIP shall be no later than ''five years after . . . the date of promulgation of such a plan revision in the case of action by the Administrator under section 110(c).'' The commenter concluded that because the FIP for NGS is not promulgated under section 110(c) of the CAA, the 5-year timeframe for BART does not apply to NGS.

*Response:* EPA agrees with the comment in support of our action to find that the TWG Alternative meets the framework established in our Proposed Rule. EPA agrees that we have the legal authority under the CAA and RHR to implement a ''better than BART'' alternative.[107] EPA agrees that we have the authority under the CAA and the TAR to extend the compliance date that will apply to the ''better than BART'' alternative pursuant to CAA Section 301(d)(4) and 40 CFR 49.11(a), as discussed in detail below.

We also note that regardless of whether the commenter is correct that the CAA does not require compliance with the BART requirements within five years for sources subject to a FIP in Indian country, we consider five years to be a reasonable timeframe for the installation and operation of SCR at NGS. To the extent the commenter is correct that the timing provisions of section 169A(g)(4) are outside the scope of EPA's action to implement a FIP in Indian country under section 301 and the TAR, this further supports EPA's determination that extending the compliance deadline beyond 2018 for a BART alternative at NGS is appropriate.

EPA also agrees with the comment that approving the TWG Alternative for NGS will not compromise the ultimate goal of the RHR based on progress toward eliminating human-caused visibility impairment in Class I areas by 2064.[108] The TWG Agreement provides that NGS will cease conventional coal-fired generation in 2044. Because the TWG Agreement included this provision, we are including a provision in the Final Rule that requires the operator of NGS to cease conventional coal-fired generation by December 22, 2044.[109] The TWG Agreement further states that the Navajo Nation may elect to operate NGS after December 22, 2044 consistent with EPA approval. EPA is not including this provision in the regulatory requirements at § 49.5513(j)(3)(iii); however, EPA expects that NGS would be substantially modified if the Navajo Nation were to elect to continue operation of the facility after NGS ceases conventional coal-fired generation in 2044, and that NGS would then need to meet all applicable regulatory and permitting requirements in existence at that time. In addition, any power generating units that may be built to replace NGS would also be subject to environmental review and air permitting requirements.

*Comment: General opposition to EPA's ''better than BART'' determinations.*

One commenter stated that EPA may approve an alternative to BART only under certain limited circumstances, with the fundamental legal requirement being a demonstration that the alternative will ''achieve greater reasonable progress toward natural visibility conditions'' as supported by the clear weight of evidence. The commenter indicated that there are two ways EPA can make such a

[105] 78 FR 8279 (February 5, 2013).

[106] EPA initially codified the requirements for NGS to meet an $SO_2$ emission limit in an existing FIP for the State of Arizona. See 40 CFR 52.145. After promulgation of the TAR, EPA moved the NGS $SO_2$ FIP to 40 CFR 49.5513

[107] See 40 CFR 51.308(e)(2); *CAWCD* v. *EPA,* 990 F.2d 1531 (9th Cir. 1993); *CEED* v. *EPA,* 398 F.3d 653 (D.C. Cir. 2005); *UARG* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006).

[108] See CAA section 169A(1)(a).

[109] See 79 FR 12944, 12950 (March 7, 2014). ''While it is true that the Regional Haze Rule and BART Guidelines do not contemplate unit retirements as a potential BART option, neither rule prohibits states or EPA from considering a shutdown as part of a BART determination if the strategy is proposed by the owner of a BART-eligible source.''

demonstration: (1) Showing that the distribution of emissions is substantially similar under BART and the alternative measure, and that the alternative measure provides greater emissions reductions; or (2) performing modeling to demonstrate that visibility does not decline in any affected Class I area and there is an overall improvement in visibility. The commenter stated that the EPA may not use the first prong of the above test because the TWG Alternative distributes emissions over time differently than BART. Because the TWG Alternative also results in reductions of $SO_2$ and PM, the commenter states that the pollutants reduced are also distributed differently. The commenter added that a BART alternative must ensure that all necessary emission reductions occur in the first planning period, which ends in 2018, and that any emission reductions resulting from the alternative measure must be surplus to reductions required under other provisions of the CAA.

*Response:* EPA disagrees with the commenter's statement that the TWG Alternative fails to demonstrate that it will ''achieve greater reasonable progress toward natural visibility conditions.'' As explained below, we disagree with the various comments underlying the argument that our framework for analyzing the TWG Alternative is flawed.

EPA appropriately focused on a comparison of the emissions reductions from BART and the TWG Alternative, rather than using visibility modeling to compare the two approaches. As the commenter noted, EPA's regulations provide a specific two-pronged test that may be used to demonstrate that a BART alternative achieves greater reasonable progress. In this rulemaking, EPA has applied the first prong of that test to demonstrate that the TWG Alternative provides for greater reasonable progress. The first prong of the test, set out in 40 CFR 51.308(e), states that if the distribution of emissions is not substantially different under BART and the alternative, and ''the alternative measure results in greater emission reductions,'' the alternative may be deemed to achieve greater reasonable progress. Because both BART and the TWG Alternative apply to the same source the geographic distribution of emissions is similar.[110] EPA therefore applied this test to determine whether the TWG Alternative provided for greater reasonable progress, taking into account total $NO_X$ emissions over the 2009 to 2044 period from both BART and the TWG Alternative.

The commenter argues, however, that the emissions must be temporally similar in order for this test to apply. When EPA added § 51.308(e)(3) to the regional haze regulations in 2005, however, we made clear that EPA intended this test to apply where the geographic distribution of emissions between the BART and an alternative were similar.[111] This approach is reasonable, as visibility modeling is not needed to demonstrate that a greater reduction in emissions from a source will result in greater visibility benefits than a lesser reduction in emissions from the same source. Accordingly, to the extent that the regulations are not clear that the test applies where the geographic distribution of emissions is similar, our interpretation is a reasonable one. In concluding that this test is the appropriate one to apply, EPA is not ignoring the commenter's argument that the TWG Alternative distributes emissions over time very differently than would BART, and that in the near term, visibility would improve more rapidly if EPA were to require the installation of BART controls sooner. It is not necessary to model the visibility impacts of the TWG Alternative and BART, however, to reach that conclusion.[112]

EPA is accordingly determining that the provisions for retiring capacity and installing SCR under the TWG Alternative achieve a similar geographic distribution of emissions and that the appropriate test to apply is whether the alternative provides for greater emissions reductions than BART. In applying that test, EPA considers it reasonable to consider the cumulative emissions under BART and the BART alternative, rather than to simply compare annual emissions in some future year under the two scenarios. This approach provides a reasonable mechanism to give credit to NGS for its early reduction in $NO_X$ emissions from the installation of combustion controls.

The commenter also objects to EPA's decision to approve a BART alternative that will not be fully implemented by 2018. EPA agrees that the regional haze rule requires BART alternatives to be fully implemented by states by 2018, the end of the first planning period for states that were required to submit regional haze plans.[113] As noted in the Proposed Rule, given the deadline for the submittal of regional haze SIPs, EPA's regulations accordingly built in an additional five years beyond the BART compliance date for the implementation of BART alternatives.[114]

We note that in this action, although the TWG Alternative will not be fully implemented until 2044, $NO_X$ emissions from NGS have already declined from historical levels, and significant additional declines in emissions are expected in 2019 and again in 2030. Nonetheless, we acknowledge that we are looking forward to 2044 for full implementation of the TWG alternative, well beyond the 2018 date in the RHR. We explained the basis for our proposed decision to set the compliance period for the TWG Alternative in the Supplemental Proposal. EPA's reasoning on this issue is grounded in CAA section 301 and the TAR. The TAR generally exempted Tribes from the CAA submittal deadlines that applied to States. EPA interprets the requirement in 40 CFR 51.308(e)(2)(iii) to constitute a reasonably severable RHR submittal deadline that applies to States but not

[110] In providing states with the flexibility to adopt alternative measures in lieu of BART, EPA assumed that under the BART alternative provisions, states would most likely adopt a trading program rather source specific BART controls. See, e.g., 40 CFR 308(e) (a regional haze SIP must contain BART limits unless the State demonstrates that ''an emissions trading program or other alternative will achieve greater reasonable progress. . .''). The geographic distribution of emissions under a trading program is unlikely to be similar to that under source-specific BART. In contrast, the geographic distribution of emissions under a ''better than BART'' alternative that applies only to the BART source in question would be similar.

[111] 70 FR 39136.

[112] Although the commenter argues that visibility modeling is required to demonstrate that the TWG Alternative makes greater reasonable progress, the commenter notes only in passing the second test set out in the regulations at 40 CFR 51.308(e)(3) governing situations where BART and a BART alternative will result in dissimilar distributions of emissions. In such situations, greater reasonable progress may be shown if visibility modeling shows that (i) visibility does not decline in any Class I area, and (ii) there is an overall improvement in visibility by comparing the average differences between BART and the alternative over all affected Class I areas. Even absent visibility modeling, it seems clear that the TWG Alternative, which requires NGS to reduce emissions from current levels, will not cause visibility to decline in any Class I area. Visibility modeling done by EPA in response to comments regarding the limited benefits of $SO_2$ and PM reductions suggests that the TWG Alternative also passes the second half of this test. As explained in the RTC, EPA modeled the visibility impacts of TWG Alternatives A1, A2, and A3 (the operating scenarios that include reductions in alternative pollutants). See RTC for further discussion. This modeling shows that the cumulative visibility benefits of the TWG Alternative outweigh those associated with BART. Although we have not modeled the visibility impacts of Alternative B, compliance with the 2009–2044 and 2009–2029 $NO_X$ Caps will require NGS to achieve emission reductions similar to those required under Alternative A1 because the 2009–2029 $NO_X$ Cap is based on emissions that would be expected to occur under Alternative A1 (closure of one unit in 2019) and the 2009–2044 $NO_X$ Cap applies to all alternatives under the TWG Alternative.

[113] 40 CFR 51.308(e)(2)(iii).

[114] 78 FR 8288.

to Tribes. If the alternative measure is promulgated by the State, it must ''submit[s] an implementation plan containing the following plan elements and include[s] documentation for all required analyses: . . . (iii) A requirement that all necessary emission reductions take place during the period of the first long-term strategy for regional haze.'' Therefore, it is a required ''plan element'' for a State-only required implementation plan submittal. See 40 CFR 51.308(b)(3) (requirements for States to submit long-term strategies). Because it is not mandatory for the Tribe to submit a long-term strategy, there is no mandatory requirement for the Tribe to ensure that all emissions reductions from a better than BART alternative occur within some deadline.

This result is equitable as well as reasonable. States were required to submit SIPs in 2007, allowing 11 years for a ''better than BART'' alternative to be achieved in 2018. Because this is a FIP for a source in Indian country, and we are only now implementing the requirement in 2014, it is equitable to extend the compliance time as well. Please see the RTC for a more detailed discussion.

In summary, EPA is determining that the TWG Alternative is ''better than BART'' based on achieving greater $NO_X$ emissions reductions over a similar geographic distribution, within the date of the goal specified in the RHR of achieving natural conditions in 2064. Given the requirement to cease conventional coal-fired generation at NGS in 2044, and with cumulative emissions over 2009 to 2044 being less than the BART Benchmark, the TWG Alternative satisfies the requirements of the RHR with respect to $NO_X$ BART as applied to Navajo Nation based on the TAR.

*Comment: EPA overestimated the BART Benchmark.*

Aside from its assertions that an approach using a BART Benchmark based on total emissions is not lawful under the CAA, one commenter (an organization representing itself and several other non-governmental organizations) stated that EPA's assumptions in calculating a numerical value for the BART Benchmark included errors and improper credits. Specifically, the commenter asserted that: (1) EPA's credit for the early installation of LNB/SOFA runs counter to the Regional Haze Rule, EPA's longstanding policies, and EPA's specific statements regarding the haze determination for NGS, (2) EPA's proposal to delay BART due to the LNB/SOFA credit creates a dangerous precedent that threatens to significantly undermine the regional haze program, (3) EPA made a number of errors in its calculations that all have the effect of artificially inflating the BART Benchmark. The specific errors purported by the commenter are outlined in more detail in the RTC. The commenter asserts that in total, assuming a final rule by July 1, 2014, their recommended revisions to the BART Benchmark would reduce the estimated emissions under BART during EPA's chosen timeframe (2009–2044) by nearly 100,000 tons, a reduction of approximately 26 percent. The commenter asserted that if EPA persists in using the emission cap framework, EPA must correct the $NO_X$ cap to prevent alternatives from being compared to an artificially inflated estimate of total $NO_X$ emissions.

*Response:* EPA disagrees with the assertion that we are delaying BART. As stated elsewhere in the RTC, as well as in our Proposed Rule and Supplemental Proposal, EPA did not propose to ''delay BART.'' EPA proposed to provide additional flexibility in the compliance timeframe for alternatives to BART.[115]

The commenter alleges that ''EPA's claimed reliance on ''early'' LNB/SOFA as an excuse to avoid or delay what is legally required is misplaced and without foundation in the facts or law.'' [116] The commenter cites three sources to support its assertion that the LNB/SOFA credit runs counter to the RHR and EPA's long-standing policies: (1) Page 18 of a report written by Victoria Stamper (Stamper Report), which was commissioned by the commenter and submitted as part of its comments,[117] (2) page 35728 of the July 1, 1999 Regional Haze Rule, and (3) section IV.D.4.d of the BART Guidelines.[118] EPA disagrees with these assertions.

First, the commenter's use of quotation marks around the word ''early'' implies that the LNB/SOFA modifications were not, as a factual matter, installed early. However, EPA notes that in 2008, when the operator of NGS began discussions with EPA regarding the permitting requirements associated with the significant increase in carbon monoxide (CO) emissions that would result from the installation of LNB/SOFA, EPA had already begun our process for evaluating BART for NGS, but had not yet proposed a BART determination or put forth our ANPR. Therefore, no requirement existed that mandated the installation of LNB/SOFA at NGS. In addition, the operator of NGS was aware that a BART determination, that would likely involve but may not be limited to LNB/SOFA, was forthcoming. As noted in our Proposed Rule, the operator of NGS could have waited until the compliance date for BART to initiate any reductions in $NO_X$ emissions; however, the operator elected in 2008 to seek the necessary permit to install LNB/SOFA on one unit per year over 2009–2011.[119] Thus, because the LNB/SOFA modifications were made in 2009–2011, $NO_X$ emissions from NGS declined from a high of over 35,000 tons in 2002 to less than 20,000 tons after 2011.[120] Although some of the decline in total $NO_X$ emissions can be attributed to a decrease in capacity utilization (i.e., decline in heat input of approximately 13 percent when comparing 2002 to 2013), the dominant contributor to the decline in $NO_X$ emissions from NGS was from the installation of LNB/SOFA over 2009–2011. EPA considers these emission reductions to be real reductions that were not required (i.e., voluntary and surplus) and were achieved in advance of any actual requirement to reduce emissions (i.e., early).

In addition, each of the three citations provided by the commenter does not support its assertions that our proposal to credit NGS for the early installation of LNB/SOFA runs counter to the Regional Haze Rule or EPA's long-standing policies. These three citations merely address the appropriate baseline period to use in the five-factor BART analysis. Page 18 of the Stamper Report supports our use of 2001–2003 as the baseline period for our BART determination for NGS and cites to 64 FR 35728 of the July 1, 1999 Regional Haze Rule that discusses EPA's determination that the most appropriate baseline period would be over the 2001 to 2004 timeframe. The baseline period is used for evaluating the costs and visibility benefits of controls. The Stamper Report also cites Section IV.D.4.d of the BART Guidelines at 40 CFR Part 51 Appendix Y, that states baseline emissions should generally

[115] See 78 FR 8288, column 1, describing our proposed BART determination. See also 78 FR 8289, section titled ''Legal Rationale for Extending Compliance Schedule for Alternative Measures for NGS.''

[116] See page 22 of the EarthJustice comment letter dated January 3, 2014 (document 0367 in the docket for this rule).

[117] See document number 0372 in the docket for this rule.

[118] *Id.* page 21.

[119] See Proposed Rule at 78 FR 8289 (February 5, 2013).

[120] See RTC and references therein. In 2011, NGS emitted 19,900 tons of $NO_X$, in 2012, NGS emitted nearly 16,500 tons of $NO_X$ and in 2013, nearly 17,500 tons of $NO_X$.

represent a realistic depiction of anticipated emissions for the source based on actual emissions from a baseline period.

The commenter also cited the discussion in our Proposed Rule under Factor 3, where we described, in 2008, how the early installation of LNB/SOFA would not prejudice the implementation of more effective controls for BART. As stated previously, we did not use the LNB/SOFA credit to justify a less stringent determination of BART for NGS. The commenter characterizes the credit as a shift in course from the agreements and understandings established in 2008 during the PSD permit process for the installation of LNB/SOFA. EPA disagrees. As stated in our Proposed Rule, citing the Ambient Air Quality Impact Report from the 2008 Proposed PSD Permit, EPA stated that the early installation of LNB/SOFA systems would not affect the baselines for cost or visibility improvements, and therefore will not influence EPA's determination of the $NO_X$ reductions required for BART.[121] EPA's BART analysis for NGS was consistent with this statement. As previously noted, EPA used the 2001–2003 period as the baseline for determining cost-effectiveness and visibility benefits of controls, and determined, based on our analysis of all five factors, that SCR+LNB/SOFA is an appropriate BART Benchmark for NGS.

The commenter relies on EPA's statements about the appropriate baseline period to support an assertion that in a BART analysis, EPA should not give consideration or credit for controls installed after the baseline period. As stated in section 5.0 of the RTC (section 5.0), although we appropriately acknowledged the installation of LNB/SOFA after the baseline period at NGS under Factor 3 (existing controls at the facility), our analysis of cost-effectiveness and anticipated visibility benefits appropriately compared SCR+LNB/SOFA against the 2001–2003 baseline period.[122]

EPA's proposed credit for early installation of LNB/SOFA was not associated with our five-factor analysis or BART determination for NGS. Rather, EPA discussed the LNB/SOFA credit in our framework for evaluating alternatives to BART. Specifically, in discussing our framework for BART Alternatives, EPA calculated the cumulative $NO_X$ reductions achieved early because the operator of NGS elected to install LNB/SOFA on one unit per year over 2009–2011, instead of waiting for the compliance period for BART. In our Proposed Rule and Supplemental Proposal we used this value, the LNB/SOFA credit, when comparing BART Alternatives to BART. As discussed elsewhere in the RTC, EPA's proposal to allow BART Alternatives to take credit for the early installation of LNB/SOFA at NGS is a reasonable use of our discretion under the TAR.[123]

EPA disagrees with the assertion that this credit creates a dangerous precedent that threatens to significantly undermine the regional haze program. EPA notes that part of our rationale for the better than BART framework for NGS (including the credit for the early installation of LNB/SOFA and the adjusted compliance timeframe for BART Alternatives) was the potential impacts to numerous tribes that rely on NGS and/or CAP, as well as EPA's regulations specifying that SIP submittal deadlines that apply to states do not apply to Tribes (or to EPA when implementing FIPs in Indian country). Further, EPA notes that the relationship between NGS and CAP is unique, the only other BART-eligible source in Indian country is the Four Corners Power Plant, and EPA has already completed the BART determination and FIP for this facility.[124]

EPA also disagrees with the assertion that we overestimated the BART Benchmark and $NO_X$ Cap. The commenter argues that SCR can meet a lower emission limit than proposed by EPA and that EPA should have set a compliance date within 3.5 years. As discussed in Section 8.1 of the RTC, EPA disagrees that the BART Benchmark should be based on an emission limit of 0.040 lb/MMBtu and that compliance should be required in 3.5 years. EPA is finalizing a BART Benchmark based on our determination requiring NGS to meet a limit of 0.055 lb/MMBtu within five years of the effective date of the Final Rule. Therefore, EPA is not revising the BART Benchmark or $NO_X$ Cap to assume a limit of 0.040 lb/MMBtu or a shorter compliance time for BART.

In addition, the commenter recommends that EPA use average heat input over the baseline period (i.e., over 2001–2003) rather than the average over the pre-LNB/SOFA time period (i.e., average over 2001–2008) to calculate future emissions. The commenter notes that our calculations for cost-effectiveness use baseline heat input over 2001–2003 to calculate pre- and post-control emissions (approximately 5,264 tons per year). The commenter asserts that this inconsistency is arbitrary. The commenter correctly notes that EPA used the average heat input over 2001–2008 (the pre-LNB/SOFA time period) to estimate emissions over 2009–2019 that would have occurred if the operator of NGS had not installed LNB/SOFA early, and emissions over 2019 to 2044 under BART (5,345 tons per year). The average heat input over the baseline period of 2001–2003 was 191,505,266 MMBtu, while the average heat input over 2001–2008 was 194,373,910 MMBtu. This is a difference of about 1.5 percent. EPA agrees that use of the same 2001–2003 baseline heat input value for estimating pre- and post-control emission rates is appropriate and consistent with the RHR and BART Guidelines, particularly in light of the goal of understanding the effect of a given control technology on emissions (i.e., assume identical values for baseline and future heat input to isolate the impact of control technologies). However, this approach does not mean that an average from the three-year baseline period (2001–2003) is most appropriate for estimating future emissions in determining the BART Benchmark. EPA notes that the use of average heat input for 2001–2008 includes the baseline period recommended by the commenters and provides a larger data set, and therefore a more robust average value for estimating future emissions. EPA considers the use of an average value based on three years to be less robust than an average value based on eight years of data for representing potential future operation; therefore, EPA is retaining our use of the average heat input over 2001–2008 for estimating emissions over 2009–2044. EPA further notes that emission caps in permit requirements are typically established based on the facility's potential to emit (PTE) and would thus be calculated using maximum heat input values. The highest observed annual heat input value was 199,398,687 MMBtu and, if used in the $NO_X$ cap, would result in a significantly higher BART Benchmark.

The commenter also argues that in calculating the $NO_X$ cap, EPA should use a value that reflects an annual average for post-control emission rates rather than a rate based on a 30-day average limit of 0.055 lb/MMBtu. The commenter reviewed daily data from

[121] See 78 FR 8284 (February 5, 2013).

[122] We note that in *State of North Dakota* v. *EPA,* the U.S. Court of Appeals for the Eighth Circuit vacated and remanded EPA's promulgation of a FIP for Coal Creek Station because EPA did not consider the existing pollution control technologies in use at Coal Creek Station that were voluntarily installed after the baseline period. This document is included in the docket for this rule.

[123] See 78 FR 62511 (October 22, 2013).

[124] See 77 FR 51620 (August 24, 2012).

2000 to 2013 and calculated the ratio of the maximum 30-day average rate to the annual rate for each year and determined an average ratio of 1.135. Based on this ratio, the commenter recommended that the BART emission limit of 0.055 lb/MMBtu (on a rolling average of 30 boiler operating days) be reduced by a factor of 1.135 as an estimate of what the annual average post-control emission rate would be at NGS (i.e., 0.048 lb/MMBtu). EPA agrees that generally, emission rates averaged over an annual basis are lower than emission rates averaged over a 30-day basis. However, EPA did not propose setting a BART limit for NGS on an annual average basis and EPA did not receive any comments suggesting that we do so. Without an enforceable annual limit, EPA considers it inappropriate to assume a lower emission rate in our calculation of the $NO_X$ Cap. We note that the BART Guidelines require that BART limits for EGUs be set on a rolling average of 30 boiler operating days. Therefore, although the BART Guidelines would not preclude establishing multiple emission limits over different averaging periods, the BART Guidelines do not require it.

Separately, the commenter also asserts that EPA overestimated the 2009–2044 $NO_X$ Cap. The commenter represents EPA's $NO_X$ Cap as the scenario it calls ''CAP–1'' with a value of 494,899 tons. This value is consistent with the 2009–2044 $NO_X$ Cap EPA proposed in our Supplemental Proposal.[125] The commenter asserts that this value is overestimated because (1) actual heat input data should be used to calculate the $NO_X$ Cap; and (2) the LNB/SOFA could be installed in two years.[126] EPA disagrees with these assertions.

The commenter argues that for the period of 2009–2013, actual heat input data should be used to calculate the $NO_X$ Cap instead of the average heat input value over 2001–2008. EPA acknowledges that actual heat input data is available for the 2009–2013 period; however, EPA considers using the average value to be appropriate, recognizing that years of lower than average capacity utilization will be balanced with years of higher than average capacity utilization at NGS.

The commenter also asserts that LNB/SOFA could have been required in two years, on a separate compliance timeframe than installation of SCR and that this should have been incorporated in our calculation of the $NO_X$ Cap. EPA is not aware of any BART determination that required combustion controls on a different schedule than post-combustion controls. Although the commenter correctly notes that LNB/SOFA was installed in three years (on one unit per year over 2009–2011), EPA notes that the operator began the permitting process in 2008 and installed the LNB/SOFA during periods of major outage for each unit, which occurs at NGS every six years for each unit.[127] EPA expects that it would not have been practicable to require installation of LNB/SOFA within two years following the final rule because, in order to accommodate one year for permitting, it would have required major outages on all three units in the same year. Therefore, EPA does not consider it practicable to assume the LNB/SOFA would or could have been installed on a separate track from the SCR.

Although the commenter makes assertions related to purported overestimations of the BART Benchmark and the 2009–2044 $NO_X$ Cap separately, the commenter combines all of the assertions together to argue that the 2009–2044 $NO_X$ Cap should be 373,029 tons (121,870 tons, or 25 percent, lower than EPA's proposed 2009–2044 $NO_X$ Cap of 494,899 tons). As outlined above, EPA disagrees than any of the purported corrections suggested by the commenter are necessary or appropriate for projecting annual emissions to calculate the 2009–2044 $NO_X$ Cap.

*Comment: EPA double-counted the benefits of LNB/SOFA.*

One commenter asserted that EPA double-counted the benefits of the early installation of LNB/SOFA, stating that EPA calculated cumulative emissions for the BART alternatives including the benefits of early reductions, then subsequently applied a LNB/SOFA credit again to BART alternatives.

*Response:* EPA disagrees with the assertion that we double-counted emission reductions associated with the early installation of LNB/SOFA.

In our February 5, 2013 proposed rule, EPA calculated the value of the LNB/SOFA credit based on the difference between total emissions under the BART scenario where LNB/SOFA is installed concurrently with SCR and the actual scenario when LNB/SOFA was installed early. The value of this credit was then applied to total emissions over 2009–2044 under Alternative 1.[128] Although our calculation of emissions under Alternative 1 did account for actual emissions with early installation of LNB/SOFA, and thus applying the LNB/SOFA credit to the BART Alternative may appear to be double counting, it is not double-counting because the BART Alternatives were compared against a BART Benchmark that also accounted for actual emissions with early installation of LNB/SOFA. Thus, both the BART Benchmark and Alternative 1 were calculated the same way (actual emissions accounting for early LNB/SOFA installation), and the LNB/SOFA credit was only applied to Alternative 1. An example of double-counting would have been if EPA had applied the LNB/SOFA credit to cumulative emissions over 2009–2044 under Alternative 1 and then compared that value to total emissions over the same period under BART assuming LNB/SOFA and SCR were installed concurrently.

In our October 22, 2013 Supplemental Proposal, EPA approached the calculation from a different but equivalent perspective. The new calculation approach was used because it was more intuitive to apply and understand in the context of an enforceable cap on $NO_X$ emissions. In the Supplemental Proposal, the BART Benchmark was established as the total emissions over 2009–2044 that would have occurred if LNB/SOFA and SCR were installed concurrently, five years following the effective date of the final rule. Total emissions under BART Alternatives were then calculated using actual emissions beginning in 2009 (i.e., accounting for the early installation of LNB/SOFA) and projections for future emissions. Thus, in the methodology used in the Supplemental Proposal, the LNB/SOFA credit was applied to the BART Benchmark and $NO_X$ Cap, rather than to the TWG Alternative. This method is equivalent to the one used in the Proposed Rule but does not give the appearance of double-counting. In our Supplemental Proposal and supporting documents, EPA included calculations to show that these two methods are equivalent.[129] The two methods are equivalent because what matters in the ''better than BART'' context is the difference between total emissions under BART and total emissions under

[125] See Table 3 of our Supplemental Proposal at 78 FR 62516 (October 22, 2013).

[126] See Table 3 of the report written by Nathan Miller and Raijit Sahu (Miller/Sahu Report) commissioned by the commenter and submitted with its comments. See document number 0370 in the docket for this rule.

[127] See tab titled ''Outage Cycle'' in the document titled ''EPA Analysis of BART Alternatives'' in document number 0004 in the docket for this rule.

[128] See document titled ''EPA Analysis of BART Alternative.xlsx'' in document 0004 in the docket for the rule.

[129] See Table 2 of the Supplemental Proposal (78 FR 62515, October 22, 2013) and document number 0191 titled ''Supplemental Better than BART Alterntives.xlsx'' in the docket for this rule.

the BART Alternative. Whether the LNB/SOFA credit is applied to BART or BART Alternatives will affect the absolute value of a total (e.g., using the numbers in Table 2 of the Supplemental Proposal, the LNB/SOFA credit represents a difference of 377,008 tons or 480,489 tons), but it does not affect the difference between BART and BART Alternatives. The method used in the Supplemental Proposal is more intuitive because BART and the BART Benchmark reflect total emissions over 2009–2044 that would have occurred if LNB/SOFA were installed concurrently with SCR, and the BART Alternatives reflect actual emissions without further credit or modification. Because no credits or modifications are made to actual emissions under the BART Alternatives, this method is the more logical accounting methodology for determining compliance with the 2009–2044 $NO_X$ Cap.

*Comment: BART Alternatives would interfere with reasonable progress goals in other states.*

One commenter stated delaying the compliance date for BART will allow NGS to continue emitting pollutants in excess of the levels modeled by the WRAP and will interfere with the ability of Arizona, Utah, and Colorado to meet their reasonable progress goals for 2018.

*Response:* The issue raised by the commenter is outside the scope of our rulemaking addressing the $NO_X$ BART requirements for NGS. Although 40 CFR 51.308(d)(3) requires states to submit long-term strategies that are sufficient to ensure that the state has included all measures needed to achieve its share of emission reductions agreed to through the regional planning process, the Navajo Nation has not yet submitted a long-term regional haze strategy. In addition, EPA has not yet found it necessary or appropriate to address these requirements through a FIP. If EPA determines it is necessary or appropriate to do so, we will take appropriate action.

Meanwhile, we note that for NGS, the WRAP assumed that $NO_X$ emissions in 2018 would equal 10,611 tons per year. $NO_X$ emissions under the TWG Alternative, in turn, will range from approximately 13,000 to 15,000 tons per year following the closure of one unit (or equivalent curtailment) at the end of 2019. We also note that the closure of one unit (or equivalent curtailment) by the end of 2019 would reduce not only $NO_X$, but also emissions of $SO_2$. Given the overall changes in emissions from the various regional haze actions since the WRAP made its projections, we will be better able to assess the need, if any, for further action once Arizona, Utah, and Colorado have prepared regional haze SIPs for the second planning period.

*J. Comments on the TWG Alternative and EPA's Supplemental Proposal*

*Comment: Opposition to TWG Alternative because it is premised on SCR as BART.*

One commenter argued that the 2009–2044 $NO_X$ Cap used for the TWG Alternative is unduly and arbitrarily stringent because it is based on a limit of 0.055 lb/MMBtu, which the commenter believes is too stringent because (1) EPA should not have determined that SCR is BART and (2) even if SCR were the appropriate basis for BART, 0.055 lb/MMBtu is not achievable. The commenter stated that because Arizona agricultural users will phase out their use of CAP Ag Pool water by December 2030 pursuant to the 2004 Arizona Water Settlement Act (AWSA), capital costs that are collected in advance of SCR operation will be imposed on NIA users in exchange for no benefit. The commenter asserted that if EPA finalizes either of the ''better than BART'' alternatives without modification, it would be arbitrarily and capriciously apportioning compliance costs to NIA water users for which they are not responsible. Given EPA's acknowledgment of the compliance flexibility that exists with respect to the TAR, the commenter believes that the failure to consider potential ''better than BART'' alternatives that would afford compliance flexibility to all NGS stakeholders on an evenhanded basis constitutes an abuse of discretion on the part of EPA.

*Response:* EPA disagrees with the assertion that the TWG Alternative is unduly and arbitrarily stringent because it is based on a BART limit of 0.055 lb/MMBtu. We consider the limit of 0.055 lb/MMBtu to appropriate for establishing the BART Benchmark for NGS. EPA addressed specific comments related to the BART limit in section 8.1 of the RTC. We also note that the TWG Alternative was developed as an agreement between diverse stakeholders, including SRP, the operator of NGS on behalf of itself and other co-owners, and the CAWCD. Although both entities submitted comments in opposition to the proposed BART limit of 0.055 lb/MMBtu, both parties signed the TWG Agreement that establishes the $NO_X$ Cap based on the proposed BART limit of 0.055 lb/MMBtu.

The commenters indicate that their access to CAP Ag Pool water is expected to end in 2030, and assert that the timeframes for compliance with the limit of 0.07 lb/MMBtu in 2030 would necessitate water rate increases prior to 2030. The commenter asserts that it is arbitrary and capricious for NIA water users to pay a few years of higher CAP water rates for controls that will not be operational until after their access to the CAP Ag Pool expires. EPA notes that the direct impact of compliance with the limit of 0.07 lb/MMBtu in 2030 under the TWG Agreement, presumably with installation and operation of SCR, would be on the cost of electricity generation. Increasing water rates are indirect impacts that result from the relationship between NGS and CAP. EPA does not set or determine water rates charged by CAWCD to the CAP Ag Pool or any other classes of CAP customers. EPA's proposed and final approval of requirements consistent with the TWG Agreement as a ''better than BART'' alternative is based on our review of the anticipated emission reductions associated with the TWG Alternative compared to BART. Although EPA, DOI, and DOE have committed to work together on many issues related to NGS, including funding for the federal portion of capital improvements at NGS, EPA does not determine how controls would be financed and how and when electricity or water rates would be adjusted to recover costs.

*Comment: TWG Alternative does not fully meet EPA's obligations to the Gila River Indian Community.*

The Gila River Indian Community said that even though it fully supports the TWG Alternative, it is concerned that EPA has not met its obligations to the Community because of the significant costs on NGS and associated impacts on the Community. Rather, the commenter views the TWG Alternative as the first step in a process that will limit the impacts on the Community because only under the TWG Alternative will key U.S. commitments contained in the TWG Agreement be realized. Specifically, under the TWG Agreement, and as outlined by the commenter, DOI will work with the Community and other tribes in the area around NGS, to evaluate the actual impacts the regulatory requirements will have on NGS over time. The commenter specifically referred to the U.S. commitment to allocate $10 million annually for 10 years starting in 2020, from the Reclamation Water Settlements Fund to reduce impacts to the Development Fund.

*Response:* EPA acknowledges the comment and is aware that costs associated with implementing the TWG Alternative will have implications for numerous Tribes, including the Gila

River Indian Community. EPA is committed to continuing to work with the Department of the Interior and the Department of Energy in the Interagency Working Group on NGS, as laid out in the Joint Statement signed in January 2013 by the heads of the three agencies, to work with tribes to address long-term issues related to NGS. The provisions in the TWG Agreement that are not related to EPA's authority to evaluate BART or a ''better than BART'' alternative, however, are beyond the scope of this rulemaking.

*Comment: TWG Alternative is vague and unenforceable.*

One commenter stated that a BART determination must include clear requirements for emissions reductions and a clear timeline for those reductions, to ensure continuing visibility improvements in Class I areas. The commenter indicated that without specific emission limits and/or commitments to retire specific amounts of capacity from specific units, as of a date certain, it is impossible to calculate the visibility improvements that will result from the TWG Alternative, particularly TWG Alternatives A3 and B, and it will be impossible for individuals or EPA to assess whether NGS is on track to meet the emission reductions necessary to ensure reasonable progress toward natural visibility in affected Class I areas.

*Response:* EPA disagrees with the assertion that the TWG Alternative is vague and unenforceable. EPA acknowledges that the TWG Alternative provides flexibility in a manner that appears complex. This complexity is a result of the role future ownership outcomes will have in determining the most reasonable compliance options in the future. Once the ownership issues are resolved, the scope of options under the TWG Alternative narrows. Although some flexibility still remains in the TWG Alternative, particularly under TWG Alternative B, the options for future operation of NGS are bounded by the limitations provided by the 2009–2044 and 2009–2029 $NO_X$ Caps.

Contrary to the assertions by commenters, EPA included proposed regulatory language in our Supplemental Proposal that provided specific and enforceable timelines for achieving emission reductions under the TWG Alternative. The proposed language under 40 CFR 49.5513(j)(3)(i), ''Operating Scenarios to Comply with 2009–2044 $NO_X$ Cap,'' defines the timeframes and requirements under TWG Alternatives A1, A2, A3, and B, all of which must be implemented in a manner that ensures total $NO_X$ emissions over 2009–2044 remain below the 2009–2044 $NO_X$ Cap. Specifically, § 49.5513(j)(3)(i)(A) defines Alternative A1, and specifies the following requirements: (1) By December 31, 2019, the owner/operator shall permanently cease operation of one coal-fired unit and (2) by December 31, 2030, the owner/operator shall comply with a $NO_X$ emission limit of 0.07 lb/MMBtu on each of the two remaining coal-fired units. Alternative A1 is the simplest of the possible operating scenarios under the TWG Alternative and § 49.5513(j)(3)(ii)(A) specifies that Alternative A1 applies under three potential future ownership possibilities.

TWG Alternative A2 is defined in § 49.5513(j)(3)(i)(B) and requires (1) by December 31, 2019, the owner/operator shall permanently cease operation of one coal-fired unit, and (2) by December 31, 2019, the owner/operator may elect to increase net generating capacity of the remaining two coal-fired units by a combined total of no more than 189 MW. The actual increase in net generating capacity shall be limited to the sum of 19 MW and the ownership interest, in net MW capacity of up to 170 MW, purchased by the Navajo Nation by December 31, 2019. The owner/operator shall ensure that any increase in the net generating capacity is in compliance with all pre-construction permitting requirements, as applicable, and (3) by December 31, 2030, the owner/operator shall comply with a $NO_X$ emission limit of 0.07 lb/MMBtu on each of the two remaining coal-fired units. The future ownership possibilities that would trigger Alternative A2 are defined in § 49.5513(j)(3)(ii)(B).

TWG Alternative A3 is defined in § 49.5513(j)(3)(i)(C) and requires (1) by December 31, 2019, the owner/operator shall reduce net generating capacity of NGS by no less than 561 MW. The actual reduction in net generating capacity of NGS shall be determined by the difference between 731 MW and the ownership interest, in net MW capacity of up to 170 MW, purchased by the Navajo Nation by December 31, 2019, and (2) by December 31, 2030, the owner/operator shall comply with a $NO_X$ emission limit of 0.07 lb/MMBtu on two units. The future ownership possibilities that would trigger Alternative A2 are defined in § 49.5513(j)(3)(ii)(C).

TWG Alternative B is defined in § 49.5513(j)(3)(i)(D) and requires that in addition to the 2009–2044 $NO_X$ Cap, the owner/operator shall ensure compliance with the 2009–2029 $NO_X$ Cap. The 2009–2044 $NO_X$ Cap is defined in § 49.5513(j)(2)(ii) as no more than 494,899 tons of $NO_X$, and the 2009–2029 $NO_X$ Cap is defined in § 49.5513(j)(2)(i) as no more than 416,865 tons of $NO_X$. The 2009–2029 $NO_X$ Cap is based on closure of one unit by December 31, 2019 and the 2009–2044 $NO_X$ Cap is based on compliance with the BART emission limit of 0.055 lb/MMBtu by July 1, 2019. The future ownership possibilities that would trigger Alternative B are defined in § 49.5513(j)(3)(ii)(D). As described in § 49.5513(j)(4)(iv), if TWG Alternative B is triggered, the owner/operator must submit annual Emission Reduction Plans that contain the anticipated year-by-year emissions to ensure compliance with the 2009–2029 and 2009–2044 $NO_X$ Caps.

The commenter asserts that under the scenario of reduced capacity (three units remain open, i.e., TWG Alternative A3), EPA ignored other possible outcomes and simplistically assumed that two units would continue to operate at full capacity with SCR and the unit whose operation is curtailed would operate only with LNB/SOFA. The commenter asserts that there is no guarantee that the operator will choose to comply with TWG Alternative A3 in this manner. Although this specific arrangement under TWG Alternative A3 is not required, EPA disagrees that nothing compels the operator to comply with this operating scenario in a manner that reduces emissions comparably with the assumption that two units would operate at full capacity with SCR and the unit that is curtailed would operate with LNB/SOFA. EPA notes that under TWG Alternative A3, as well as all other TWG Alternatives, the owner/operator must operate the units at NGS so that total emissions remain below the 2009–2044 $NO_X$ Cap (as well as the 2009–2029 $NO_X$ Cap under Alternative B). For example, under TWG Alternative A3, if the operator chose to curtail all three units by a total of 561 MW equally and comply with a limit of 0.07 lb/MMBtu on two units and 0.24 lb/MMBtu on one unit, total emissions over 2009–2044 are not likely to comply with the 2009–2044 $NO_X$ Cap.[130] Thus, the operator would be prohibited from operating in this manner and would need to, for example, significantly curtail operations to reduce emissions further, or risk violating the FIP.

As noted in our Supplemental Proposal, EPA estimated total $NO_X$ emissions over 2009–2044 for TWG Alternatives A1, A2, and A3 to provide assurance that the owner/operator could reasonably meet the 2009–2044 $NO_X$ Cap under the specific terms of those alternatives. EPA does not need to

[130] See RTC and references therein.

determine that all operating possibilities that are consistent with the requirements of TWG Alternative A1, A2, and A3 would also meet the 2009–2044 $NO_X$ Cap. The regulatory requirements EPA is finalizing for the TWG Alternative provide specific dates on which the owner/operator must close a unit, curtail operations, and meet emission limits. While there is some flexibility in how emissions might be curtailed under TWG Alternative A3, the 2009–2044 $NO_X$ Cap ensures that the operator does not implement a strategy that results in substantially more emissions than would be achieved by installing SCR on the two units that are operated at full capacity and curtailing operations on the unit that was not retrofit with SCR.

The commenter asserts that there are an infinite number of ways the operator could comply with the 2009–2029 and 2009–2044 $NO_X$ Caps under TWG Alternative B. The commenter further states that the two possibilities EPA considered in our Supplemental Proposal are not likely to be the outcomes under TWG Alternative B. EPA agrees that TWG Alternative B provides more flexibility than TWG Alternative A. However, EPA disagrees that TWG Alternative B is so open-ended that it would not be enforceable or result in emission reductions at NGS. We note that the 2009–2029 $NO_X$ Cap was calculated based on the closure of one unit with no additional increase in capacity (i.e., equivalent to emissions under TWG Alternative A1). Thus, the operator cannot maintain the status quo (operation of all three units at full capacity at a limit of 0.24 lb/MMBtu) and meet the 2009–2029 $NO_X$ Cap. We recognize that several commenters are concerned about the flexibility under TWG Alternative B. However, as discussed further in the RTC, we note that the range of possible operating choices for TWG Alternative B is substantially constrained by the requirement to comply with the 2009–2029 and 2009–2044 $NO_X$ Caps.

Although we disagree with commenters that the TWG Alternative is vague and unenforceable, in response to the concerns expressed by these commenters, to provide additional assurance that cumulative emissions of $NO_X$ from NGS under the TWG Alternative will not exceed the BART Benchmark, EPA is adding the following provisions to the Final Rule. Under all Alternatives, if cumulative emissions of $NO_X$ from NGS exceed the 2009–2044 $NO_X$ Cap prior to 2044, the operator of NGS must permanently cease operation of NGS. In addition, under Alternative B, if cumulative emissions of $NO_X$ exceed the 2009–2029 $NO_X$ Cap prior to 2029, the operator of NGS must temporarily cease operation of all units at NGS.[131]

One commenter asserted that EPA was incorrect to claim that the TWG Alternative would absolve NGS of obligations related to a Reasonably Attributable Visibility Impairment (RAVI) finding that may be made for NGS.[132] EPA disagrees that we claimed that the TWG Alternative would absolve NGS of obligations related to RAVI. The commenter cited to footnote 21 in our Supplemental Proposal.[133] In that footnote, we acknowledged that the TWG had intended their alternative to satisfy both the ''better than BART'' requirements of the RHR as well as any requirements of the RAVI program. Our footnote merely noted that there was no outstanding petition to certify impairment from NGS at any Class I area and outlined the process and requirements for triggering a BART determination under RAVI. Although we stated that a BART determination under RAVI would likely be the same as a BART determination under regional haze (i.e., an analysis of the five factors listed in the CAA), EPA did not make any conclusions or absolve NGS of any obligations related to RAVI because there is currently no action before EPA to make an attribution finding related to NGS.

EPA is finalizing the requirements of the TWG Alternative, consistent with Appendix B of the TWG Agreement, which require, among other things, emission reductions in 2019 and 2030. EPA is also adding as an enforceable requirement, the commitment from the TWG Agreement to cease conventional coal-fired electricity generation at NGS by 2044. EPA considers these timeframes to be consistent with the stated goal of section 169A of the CAA. EPA has addressed comments regarding consistency with EPA's regulations, including the RHR and the TAR, in section 8.5 of the RTC.

*Comment: Additional concerns with TWG Alternative.*

The Hopi Tribe indicated that it has serious concerns with the proposed TWG Alternative for several reasons, including because the TWG Alternative does not specify the technology, i.e., either SCR or an equivalent that will be used to achieve the same level of $NO_X$ reductions as the BART proposal. The commenter states the TWG Alternative is ambiguous because both scenarios are vague and do not include the same level of assurance that the $NO_X$ reductions will be the same as under the BART proposal. Also, because the time NGS would be permitted to operate without SCR (or equivalent alternative) would be adjusted under the TWG Alternative, the commenter believes the TWG Alternative jeopardizes the goal of the CAA and the purpose of this regulation.

*Response:* Our proposed BART determination did not specify what technology must be used because BART is defined as an emission limit that represents the level of control representing BART, not a particular technology. Thus, our Proposed Rule and the Supplemental Proposal both imposed emission limits for $NO_X$. The limits for BART (0.055 lb/MMBtu) and the TWG Alternative (0.07 lb/MMBtu) are based on what is achievable using a specific technology. Both limits are achievable with SCR, but the operator may consider using newer technologies, if available, as long as each unit complies with its applicable emission limit by its compliance date. The commenter also noted that the extended period for compliance under the TWG Alternative may jeopardize the goal of the CAA and the purpose of the RHR. Under section 169A of the CAA and the RHR, the goal of restoring visibility in Class I areas to natural conditions is set for 2064.[134]

*Comment: ''Arbitrary'' 2044 end date.*

One commenter stated that the 2009–2044 period analyzed for the TWG Alternative is arbitrary because it is quite likely that one or more NGS units will operate beyond that time frame. The commenter asserted that if NGS units continue to operate for even 3 additional years, until 2047, the TWG Alternative permits outcomes that will result in greater total $NO_X$ emissions than the 2009–2044 $NO_X$ Cap.

*Response:* EPA disagrees with the comment that the 2044 end date for the $NO_X$ Cap is arbitrary. EPA used 2044 as the end date in our calculations of the BART Benchmark. We selected 2009–2044 as most appropriate because it includes the early installation dates for LNB/SOFA and extends until the anticipated 2044 termination date of the renewed site lease that was approved by the Navajo Nation.[135] Under the TWG

[131] The combination of the 2009–2044 and 2009–2029 $NO_X$ Caps under TWG Alternative B means that if NGS exceeds the 2009–2029 $NO_X$ Cap prior to 2029 it must cease operation, but the operator may re-start operation after 2030 as long as cumulative emissions have not yet exceeded the 2009–2044 $NO_X$ Cap.

[132] See EarthJustice letter, page 10, footnote 25.

[133] See Supplemental Proposal, 78 FR 62513, footnote 21 (October 22, 2013).

[134] 40 CFR 51.308(d).

[135] See Footnote 60 in the Proposed Rule, 78 FR 8290 (February 5, 2013).

Agreement signed by six entities including the Navajo Nation and SRP, the NGS Co-Tenants shall cease their operation of conventional coal-fired generating at NGS no later than December 22, 2044. At its election, consistent with the Lease Amendment, the Navajo Nation may continue plant operations at NGS after December 22, 2044 consistent with EPA approval.[136] Thus, the Navajo Nation may seek to operate NGS after 2044, however, EPA expects that operation of NGS after the owners cease conventional coal-fired generation would involve substantial modification to NGS and NGS would be required to meet all applicable regulatory and permitting requirements in existence at that time. To make this end date federally-enforceable, EPA is adding it as a requirement to the regulatory language in today's final action. EPA is adding the regulatory language in the Final Rule under 40 CFR 49.5513(j)(3)(iii) stating that by December 22, 2044, the owner/operator shall permanently cease operation of all coal-fired units at NGS. At its election, the Navajo Nation may continue plant operation at NGS after December 22, 2044, consistent with EPA approval under the New Source Review program.

*Comment: Emissions under the TWG Alternative.*

One commenter stated that neither EPA nor TWG have provided a comprehensive technical analysis of the emissions that are possible under the TWG Alternative. The commenter asserted that it is EPA's responsibility to provide an administrative record that contains comprehensive modeling and analysis for any BART proposal, but EPA left this critical component of the alternatives analysis undone.

The commenter provided its own calculations of emissions under TWG Alternative A and B and compared those estimates with its own calculation of a $NO_X$ Cap and BART Benchmark, and concluded that cumulative emissions from possible scenarios under the TWG Alternative are not lower than its $NO_X$ Cap or BART Benchmark.

*Response:* EPA disagrees with the comment that we have failed to provide a comprehensive technical analysis of the TWG Alternative. We also disagree with the assertion that our administrative record for this rulemaking is incomplete. As stated elsewhere in the RTC, EPA's analysis of the TWG Alternative is consistent with the required analyses for alternatives to BART outlined in the RHR.

The comment relies on a report prepared by Nathan Miller and Ranijit Sahu (Miller/Sahu) for the commenter contending that EPA's evaluation of the TWG Alternative is incorrect. But the report changes the central inputs underlying our calculations for BART and the TWG Alternative. The specific technical reasons that we disagree with the inputs that Miller/Sahu changed (e.g., $NO_X$ emissions limit achievable with SCR, heat input values from baseline period, annual vs. 30-day emission rates) are explained in detail in section 8.5 of the RTC.

Table 2 in the Miller/Sahu report depicts BART–1 as ''EPA BART (No Corrections),'' showing a value of 379,152 tons of cumulative $NO_X$ emissions over 2009–2044 that is nowhere traceable to EPA's documents.[137] The Miller/Sahu report then makes several ''corrections'' to reach a value of 280,554 tons of $NO_X$ emissions. EPA has explained in detail why we disagree with each of the Miller/Sahu ''corrections'' in section 8.5 of the RTC and references therein. For the reasons set forth in section 8.5, we also continue to disagree that our calculation of the BART Benchmark or the $NO_X$ Cap has relied on any incorrect inputs.

Because we disagree with the ''corrections'' and the values presented in the Miller/Sahu report, we also disagree with the conclusions of Miller/Sahu that the TWG Alternative fails to satisfy our requirements for demonstrating an alternative is ''better than BART''. The commenter cannot change the fact that its alternative preferences on the inputs for calculating BART are just preferences by simply calling them ''corrections.''

*Comment: Visibility modeling under the TWG Alternative.*

One commenter stated that the TWG Alternative distributes emissions over time very differently than BART: While BART would require $NO_X$ reductions within 5 years, the bulk of the reductions in the TWG Alternative might not come until the end of the 2009–2044 period. The commenter stated that the additional analysis and modeling it conducted reveals that the TWG Alternative is likely substantially worse than BART.

*Response:* As discussed elsewhere in this document, because emission reductions achieved under the TWG Alternative will have the same geographic distribution as emission reductions under BART, EPA disagrees that visibility modeling is required for our evaluation of the TWG Alternative. We note that the commenter provided its own visibility modeling and EPA disagrees with methodologies used and conclusions drawn by the commenter.

The Miller/Sahu Report compared anticipated visibility impacts from the TWG Alternative against the anticipated visibility impacts based on its own preferences for the $NO_X$ Cap and BART Benchmark. Although the commenter asserts that its analysis shows that visibility under the TWG Alternative is substantially worse than under its preferences for the BART Benchmark and $NO_X$ Cap, their analysis also shows that when the TWG Alternative is compared to the BART Benchmark and $NO_X$ Cap as proposed by EPA, the TWG Alternative scenarios it explored that meet the 2009–2044 and 2009–2029 $NO_X$ Caps (as applicable) generally result in lower or comparable visibility impacts as BART.[138]

EPA conducted visibility modeling to compare TWG Alternatives A1, A2, and A3 in 2019 and 2030 against the BART Benchmark.[139] As indicated by commenters, other possibilities exist beyond the scenarios for the TWG Alternatives we considered explicitly in our Supplemental Proposal. EPA has stated elsewhere that we need not consider potential emissions under all possible scenarios in setting the $NO_X$ Cap, but must verify that NGS can reasonably be expected to comply with 2009–2044 $NO_X$ Cap under the various constraints imposed under the TWG Alternatives (i.e., closure, curtailment, and a secondary 2009–2029 $NO_X$ cap). However, EPA explored two other possibilities under TWG Alternative A3 that included reducing capacity on all three units equally or reducing capacity on two units and installing SCR on the two units that operate at reduced capacity.[140] EPA did not include those two additional possibilities under TWG Alternative A3 in our visibility modeling analysis because those scenarios do not reduce emissions sufficiently to meet the 2009–2044 $NO_X$ Cap.

Our visibility modeling of the TWG Alternatives compared to our proposed BART determination shows that, as expected, during the approximate 10-year period between 2019 and 2030, the visibility impacts of NGS under the TWG Alternatives are higher than the visibility impacts of NGS under BART. After 2030, when NGS achieves additional emission reductions through compliance with a limit of 0.07 lb/

[136] See Section VII.F of the TWG Agreement (page 14).

[137] Miller/Sahu Report, Table 2 at p. 7.

[138] See Exhibit 2 to the Miller/Sahu report and RTC and references therein.

[139] See RTC and references therein.

[140] *Id.*

MMBtu on two units, our modeling indicates that the visibility impacts under the TWG Alternatives are comparable to or lower than visibility impacts under BART (see RTC for further detail). These results are not surprising and mirror the comparative reduction in $NO_X$ emissions under the TWG Alternatives and the BART Benchmark over time, showing greater overall visibility improvement under the TWG Alternative than under the BART Benchmark.

As noted elsewhere in the RTC, EPA is including as part of the TWG Alternative, in the regulatory language in the Final Rule, a provision consistent with the TWG Agreement that the operator of NGS permanently cease conventional coal-fired generation by the end of 2044. Thus, under the TWG Alternative, the visibility impact of NGS is likely to be zero or near zero in 2045 and thereafter.[141] Under BART, there would be no commitment or enforceable requirement to close after 2044, therefore, visibility impacts of NGS at all 11 Class I areas would be expected to continue in 2045 and thereafter.

*Comment: Economic Impacts of the TWG Alternative.*

The Hopi Tribe expressed concern that EPA did not assess the potential economic impacts of the TWG Alternative to the Hopi Tribe. The commenter opined that EPA recognized the significance of NGS to the Hopi Tribe in its analysis under Factor 2. Because the TWG Alternative includes closure of at least one unit in 2019, and EPA did not address the potential economic impacts of partial closure of NGS on the Hopi Tribe, the commenter contended that the Agency has not complied with the RHR and BART Guidelines. The Hopi Tribe noted that in the event capacity is reduced at NGS under the Supplemental Proposal, the amount of coal and water purchases from the Tribe would decrease leading to a decrease in income to the tribe from the sale of these. The commenter also stated that the Supplemental Proposal is not as effective in improving air quality and visibility for the Hopi Reservation. Extending the timeframe during which NGS can continue to operate without SCR or an equivalent technology would cause a continued air quality burden on the Hopi Tribe.

*Response:* EPA recognizes that the TWG Alternative, which includes closure of one unit at NGS or equivalent curtailment of operation, may change the royalties and other payments related to coal and water that are paid to the Hopi Tribe. Although EPA evaluated cost-effectiveness and affordability of the options in our analysis of BART controls, we disagree that we must also conduct an economic impact analysis for alternatives to BART. The BART Guidelines provide little guidance on the evaluation of alternatives to BART and the RHR does not require an analysis of economic impacts of BART Alternatives. EPA's evaluation of potential impacts to tribes in our analysis of BART controls was used to inform our government-to-government consultation with tribes and is consistent with BART. In addition, we have held numerous government-to-government consultation meetings with tribes to discuss NGS during this rulemaking. EPA continues to recognize the issues and concerns of tribes located in Arizona regarding NGS and is committed to continuing to work with our federal partners and the tribes through the Joint Federal Agency Work Group on NGS to help address these issues.

The Hopi Tribe also expressed concern that the TWG Alternative is less effective than BART at improving air quality and visibility on the Hopi Reservation. EPA notes that the purpose of the RHR is to reduce visibility impairment at Class I areas; however, EPA disagrees that the TWG Alternative is less effective than BART. Although the timeframe for implementation of the TWG Alternative (new reductions in 2019 and 2030) is longer than the timeframe for BART (in 2019), we note that BART would only reduce emissions of $NO_X$, whereas the TWG Alternative, in 2019, would also reduce emissions of $SO_2$, PM, $CO_2$, and hazardous air pollutants as a result of the closure of one unit (or equivalent curtailment).

*Comment: Support for some changes EPA made to the TWG Agreement in the Supplemental Proposal.*

The TWG noted that there were several differences between Appendix B to the TWG Agreement and EPA's Supplemental Proposal of the TWG Alternative. The commenters expressed support for some of the differences, and expressed concern with others. One commenter agreed with the methodology that EPA used to calculate the 2009–2044 $NO_X$ Cap of 494,899 tons.

The commenter supported the additional requirement to report annual heat input, although this information is already reported through the Acid Rain Program. However, the commenters requested that additional time be provided to ensure that the data submitted in the annual report are consistent with the data that the NGS operator submits to the Clean Air Markets Database (CAMD), in the annual emission inventory, and in the greenhouse gas (GHG) report required by 40 CFR part 98, which are not due until March 31st.

*Response:* EPA recognizes that the TWG supports some of the changes EPA made to Appendix B to the TWG Agreement, including EPA's revisions to the 2009–2044 $NO_X$ Cap and the requirement to report annual heat input. EPA agrees that it is reasonable to require the timeframe for the reporting requirements under BART to generally be more consistent with other reporting requirements. Therefore, EPA is revising the regulatory language accordingly.

*Comment: Suggested addition to §§ 49.5513(j)(4)(iv)(A) and (B).*

The TWG requested that EPA clarify the scope and content of the title V permit revision that is necessary to incorporate elements of the BART alternative by adding the language from Appendix B of the TWG Agreement to the requirements of the TWG Alternative.

*Response:* EPA did not include the language from the TWG Agreement related to the title V (part 71) operating permit in the regulatory language in our Supplemental Proposal because the title V (part 71) regulations require that the operating permits include all applicable requirements, which for NGS would include the permit limits that exist in its PSD permit (i.e., the limit of 0.24 lb/MMBtu when operating with LNB/SOFA) as well as the final requirements in this FIP (e.g., the limit of 0.07 lb/MMBtu on two units in 2030). Therefore, a specific requirement in the FIP that directs the operating permit to incorporate applicable requirements is not necessary. However, to the extent the TWG requests consistency with the language in the TWG Agreement, although EPA considers it unnecessary, EPA will amend § 49.5513(j)(4)(iii) as suggested by the commenter.

We further note that in the proposed regulatory language in our Supplemental Proposal, EPA inadvertently did not specify an averaging period for the emission limits under the TWG Alternative Operating Scenarios (§ 49.5513(j)(3)). Therefore, EPA is adding to the regulatory language that emission limits apply over a rolling average of 30 boiler operating days, to 40 CFR § 49.5513(j)(3), (j)(3)(i)(A)(2), (j)(3)(i)(B)(3), and (j)(3)(i)(C)(2).

*Comment: Another suggested addition to §§ 49.5513(j)(4)(iv)(A) and (B).*

[141] EPA expects that if the Navajo Nation elects to operate NGS after the owners have ceased conventional coal-fired generation, this would likely involve substantial modifications to NGS and NGS would be subject to all applicable regulatory and permitting requirements in existence at that time.

The TWG stated that the Supplemental Proposal specified a short-term $NO_X$ limit of 0.07 lb/MMBtu for TWG Alternative A, but not for Alternative B as was included in the TWG Agreement.

*Response:* EPA agrees that if the owners of NGS elect to install SCR in order to comply with the applicable $NO_X$ Caps under TWG Alternative B, then it is useful to specify the emission limit that would apply. Although the limit of 0.07 lb/MMBtu (on a rolling average basis of 30 boiler operating days) would apply under TWG Alternatives A1, A2, A3, or B, EPA notes that the operator of NGS may need to operate SCR at an emission rate that is lower than 0.07 lb/MMBtu depending on their compliance with the $NO_X$ Cap, but the addition of this provision would prohibit emissions of $NO_X$, when operating with SCR, to exceed 0.07 lb/MMBtu (on a rolling average basis of 30 boiler operating days). EPA will amend the regulatory text accordingly.

*Comment: Omitted ownership outcome.*

The TWG stated that the EPA described the NGS ownership outcomes in a manner that is different from the scenarios outlined in the TWG Agreement. The commenter indicated that the ownership outcomes appear to be consistent, except that one potential outcome was omitted—the scenario in which one or more of the existing NGS Participants (LADWP or NV Energy) remain in NGS, which would trigger Alternative B.

*Response:* EPA agrees that we inadvertently omitted from § 49.5513(j)(3)(ii)(D) the potential scenario where one or both of the Departing Participants (i.e., LADWP or NV Energy) do not exit NGS as expected. EPA is updating the language to incorporate the omitted ownership possibility.

*Comment: Describe details of TWG Agreement more fully in the preamble to the Final Rule.*

The TWG expressed concern that EPA only briefly described the elements of the TWG Agreement in the Supplemental Proposal. One member of the TWG asserted that the limited discussion does not accurately present the provisions of the Agreement as it relates to clean energy economic development for affected Tribes, the rigorous development and consideration of clean energy alternatives to NGS, mitigation of $CO_2$ emissions, and Local Benefit Fund to address concerns of the public in the vicinity of NGS and the Kayenta-Black Mesa Mine Complex. Should EPA proceed with this alternative in the Final Rule, the commenter requested that the Agency fully describe the key elements in the preamble to the Final Rule.

*Response:* EPA acknowledges that the TWG Agreement contains additional provisions that will be beneficial to the tribes in the area and to the environment. However, EPA does not consider it appropriate to provide a detailed discussion of these additional provisions of the TWG Agreement in our Final Rule. EPA was not a signatory to the TWG Agreement and did not participate in the TWG Stakeholder group. The TWG Agreement speaks for itself and the participants and signatories are the appropriate entities to interpret the provisions of the TWG Agreement. EPA is finding that it is necessary or appropriate to regulate $NO_X$ emissions from NGS to reduce visibility impairment at the GCNP and 10 other Class I areas. The other measures described by the commenter are outside the scope of our authority for this action. Therefore, EPA is declining to provide any further discussion of the provisions in the TWG Agreement that go beyond addressing regional haze concerns associated with $NO_X$ emissions from NGS.

The comment also requests EPA to add certain language to the Final Rule. Specifically, the comment asks EPA to add: ''Nothing in this final rule shall preclude the NGS Participants from seeking to obtain greenhouse gas emission reduction credits, or similar commodities associated with activities committed to in the TWG Agreement, under any Federal or State law or policy to the extent permitted under such applicable law or policy.''

EPA is also declining to add the requested language to our Final Rule. EPA is not exercising any authority in this action other than implementing the BART provisions in CAA section 169A and the RHR, through our discretion in the TAR. It would be inappropriate in this action to take any position on the future use or regulation of GHG emission reductions or ''similar commodities.''

*Comment: TWG Alternative meets Reasonable Progress requirements.*

One member of the TWG stated that the TWG Alternative was intended to meet not only BART requirements, but also reasonable progress requirements applicable to NGS through 2044. The commenter requested that EPA acknowledge, in the preamble to the Final Rule, that the TWG Alternative satisfies both the BART and reasonable progress requirements of the CAA through 2044.

*Response:* Today's final rule addresses the $NO_X$ BART requirements of the RHR for NGS. We have not considered whether the TWG Alternative meets the reasonable progress requirements for NGS. We note that EPA has not made any finding pursuant to 40 CFR 49.11(a) that it is necessary or appropriate at this time to promulgate a FIP to meet the reasonable progress or other requirements under the RHR. The requirement for states to develop reasonable progress goals and long-term strategies to achieve those goals is set out in CAA section 169A and 40 CFR 51.308(d). There is no requirement that EPA address these requirements for sources on the Navajo Nation unless EPA makes a determination that it is necessary or appropriate for EPA to do so.

*Comment: Delete requirement to keep records of maintenance.*

One member of the TWG requested that EPA delete the requirement that the NGS operator keep records of all major maintenance activities that occur at NGS. According to the commenter, the existing title V permit, which requires that the operator maintain and operate emission control equipment in a manner that is consistent with good engineering practices to keep emissions at or below applicable emissions limitations, provides sufficient assurance that emission control equipment will be operated and maintained in accordance with best practices.

*Response:* EPA is deleting the requirement proposed under § 49.5513(j)(7)(vi) to require the operator of NGS to keep records of all major maintenance activities at NGS because records of major maintenance activities are not needed for demonstrating compliance with the 2009–2044 or 2009–2029 $NO_X$ Caps or other provisions of the TWG Alternative.

*Comment: Require recordkeeping for the life of the plant.*

One commenter indicated that the requirement to maintain records for 5 years is insufficient and inappropriate for the compliance schedule associated with NGS and recommended that records be maintained from 2009 through the remaining operating life of the plant.

*Response:* EPA agrees that because the operator of NGS must ensure compliance with the 2009–2044 $NO_X$ Cap, the operator of NGS should also maintain records for the life of the facility to demonstrate compliance with the TWG Alternative. In the regulatory language in our Final Rule, EPA is amending § 49.5513(j)(7) to require the owner or operator of each unit to maintain records, as required under § 49.5513(j)(7)(i) to (vi), until the earlier of December 22, 2044 or the date that

the owners cease conventional coal-fired operation of all units at NGS.

*Comment: Concern that affected parties were excluded from TWG.*

Numerous commenters expressed frustration that all affected parties were not included in the development of the TWG Alternative. The Hopi Tribe noted that they have a Generating Performance Agreement with SRP that should have mandated their involvement. The White Mountain Apache Tribe also noted that it was not party to the TWG Agreement. Another commenter noted that Executive Order (EO) 13175 requires that all tribal nations be consulted on these types of regulations, and asserted that EPA and DOI violated this EO. Another commenter argued that the TWG did not include grassroots organizations and discouraged their participation in TWG public forums.

One commenter stated that the EPA did not give the public enough time to comment on the TWG Alternative before proposing approval of it and, on that basis, demanded that the EPA withdraw its proposed approval. The commenter added that the TWG Agreement assumes that the Hopi will support the Kayenta Mine Lease extension when it expires in 2025, but the Hopi have yet to discuss the extension with the 12 Hopi independent villages, which is a requirement in the Hopi Constitution. Furthermore, the commenter noted that the TWG Agreement ignores the requirement of completing an EIS and ROD before the NGS site lease with the Navajo Nation expires in 2019. The commenter argued that DOI's signing of the TWG Agreement, without the fulfillment of these requirements, violates NEPA. The commenter added that in 1989, the Hopi Tribe rejected the Draft Kayenta Mine-Black Mesa Mine EIS in its entirety, and implied that the decision to accept the TWG proposal could compromise EPA's final decision.

*Response:* EPA recognizes that there are affected tribes and other stakeholders that were not invited to participate in the Technical Work Group. EPA was not involved in the formation of the TWG and not involved in any meetings or discussions of the TWG.[142] As discussed in section 10.0 of the Response to Comments document, consistent with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments, EPA consulted with tribes early and regularly during the development of this rulemaking for NGS. We note that the Regional Administrator for Region 9 spoke with Chairman of the Hopi Tribe, LeRoy Shingoitewa, on September 13, 2013 about the TWG Alternative and notified elected leaders or legal counsel for five tribes when EPA signed the Supplemental Proposal. EPA also held individual and joint consultation meetings with tribal leaders in Phoenix, Arizona on December 9 and 10, 2013.

EPA disagrees that we did not provide the public enough time to review the TWG Alternative. EPA posted the TWG Alternative to the public docket on July 26, 2013, the same day it was submitted to EPA.[143] EPA reviewed the TWG Alternative and on September 25, 2013, signed a Supplemental Proposal that put forth the TWG Alternative as an additional better than BART alternative for public comment. On October 22, 2013, the Supplemental Proposal was published in the **Federal Register**.[144] The public had nearly six months to review the TWG Agreement and Alternative as submitted to EPA and approximately three months to review and comment on EPA's Supplemental Proposal. EPA also notes that EPA's rulemaking is not subject to NEPA.

*Comment: EPA's relationship to the TWG is confusing.*

The White Mountain Apache Tribe stated that although EPA stated it was not involved in the Technical Work Group, EPA was a signatory of the ''Joint Federal Agency Statement Regarding Navajo Generating Station,'' the scope of which includes numerous elements that reference EPA's commitments, along with the Departments of the Interior and Energy, in relation to NGS. The commenter suggests that EPA was involved in a legal triangulation with the TWG signatories and that such action is an extra-jurisdictional exercise by EPA, to which the Tribe does not consent. The commenter concludes that the Tribe cannot consider the TWG Alternative unless its published form is changed by EPA to fully disentangle the proposal from the signatory group and all non-BART Agreement terms, and additional public comment is thereafter allowed.

*Response:* We disagree that the Joint Federal Agency Statement Regarding Navajo Generating Station indicates that EPA was involved in the TWG. The Joint Federal Agency Statement was signed by the Administrator of EPA and the Secretaries of the Interior and Energy on January 4, 2013. Among other things, that document acknowledged that each of the three federal agencies has an interest in the operation of NGS and set forth the goals of the agencies with respect to NGS and energy production in the region served by NGS.

Although EPA clearly has an interest in reducing the visibility impacts of NGS, EPA was not part of the TWG. EPA did not participate in any of the substantive discussions and negotiations of the TWG. Two representatives of EPA attended the beginning of the first meeting of the TWG but only to present a summary of EPA's February 5, 2013 Proposed Rule.[145] After the initial meeting, EPA was not involved with the TWG until the TWG Agreement was completed. As such, EPA disagrees with the commenter that EPA is ''entangled'' with the TWG.

The TWG was not primarily composed of federal agencies. The TWG had two Tribes (Gila River Indian Community and the Navajo Nation), two environmental organizations (Environmental Defense Fund and Western Resource Advocates), two Arizona utilities (CAWCD and SRP) and DOI. Appendix B of the TWG Agreement contains provisions relating to BART but there were several other provisions of the TWG Agreement that are beyond the scope of BART and are not part of EPA's rulemaking in this action.

For all the above reasons, EPA does not agree with the assumption underlying the comment that the White Mountain Apache Tribe ''cannot consider the TWG Alternative unless its published form is changed by EPA to fully disentangle the proposal from the signatory group and all non-BART Agreement terms.'' EPA does not agree that any further public comment is warranted.

*K. Other BART Alternatives*

*Comment: Suggested BART Alternative from EarthJustice.*

Despite its objections to the proposed BART alternatives, one commenter suggested an alternative that includes (1) an enforceable requirement that one NGS unit shut down by 2020 and (2) an enforceable requirement that the remaining two units install SCR and meet a $NO_X$ emission limit of 0.065 lb/MMBtu by the beginning of 2020. The

[142] At the request of the TWG, at their kick-off meeting, EPA presented a summary of our Proposed Rule and framework for BART Alternatives. The presentation at the TWG kick-off meeting was generally the same presentation EPA provided to other stakeholders. See document 0033 in the docket for the rule.

[143] See document number 0122 in the docket for this rule.

[144] See document number 0182 and 0186 in the docket for this rule.

[145] At the request of the TWG, at their kick-off meeting, EPA presented a summary of our Proposed Rule and framework for BART Alternatives. The presentation at the TWG kick-off meeting was generally the same presentation EPA provided to other stakeholders. See document 0033 in the docket for the rule.

commenter recognized that other alternatives may exist, but asserted that for any alternative to comply with the minimum legal requirements, it must produce better visibility outcomes in Class I areas than BART and demonstrate that it does so through the use of visibility modeling.

*Response:* Neither the BART requirements nor the provisions in the RHR governing alternatives to BART requires that BART sources cease operation. As such, EPA does not consider it appropriate for the Agency to require the shutdown of one unit of NGS by 2020 absent the consent of the owners. Regardless of whether the suggested alternative would provide for earlier and greater visibility improvement, it is not an option at this time. As explained in this rulemaking, the TWG Alternative does comply with the legal requirements for BART alternatives.

*Comment: Suggested BART Alternative from CAP NIA Users: New controls should not be required until after 2030.*

One commenter presented a table purporting to show EPA's calculations of the $NO_X$ caps that would apply for a range of potential BART emission limits: 0.055, 0.06, 0.07, and 0.15 lb/MMBtu. According to the commenter, the $NO_X$ cap that would apply under limits of 0.06 and 0.07 lb/MMBtu would exceed the proposed 2009–2044 $NO_X$ CAP by 2.5 and 7.5 percent, respectively. The commenter asserted that these differences would have imperceptible impacts on visibility and that, therefore, the use of the $NO_X$ cap based on a limit of 0.055 lb/MMBtu unduly constrained TWG Alternative A and resulted in an unwarranted requirement to install SCR on two NGS units by 2030, which would impose inequitable compliance costs on agricultural water users. The commenter stated that a $NO_X$ cap based on a BART limit of 0.06 or 0.07 lb/MMBtu would be very similar to the proposed 2009–2044 $NO_X$ Cap, but would provide enough of an incremental increase to add 3 years of additional compliance flexibility for the installation of SCR on two units.

The same commenter also stated that based on the 2009–2044 $NO_X$ Cap as proposed in the Supplemental Proposal, TWG Alternative A contains unused ''headroom'' that renders the operation of SCR by 2030 unnecessary. According to the commenter, TWG Alternative A has the effect of forcing $NO_X$ emissions to a level that is at least 33,000 tons below the $NO_X$ cap, which the commenter believes makes the requirement to install and operate SCR by 2030 artificially stringent and unnecessary, and therefore arbitrary and capricious. The commenter indicated that the headroom under TWG Alternative A1 would yield more than 6 years of additional compliance flexibility for the operation of SCR, and TWG Alternatives A2 and A3 would yield more than 3 years. The commenter concluded that EPA should revise the TWG Alternatives to provide the maximum amount of compliance flexibility for installation of SCR on NGS so as to not unnecessarily impose costs on NIA water users.

*Response:* EPA disagrees with the assertion that new controls should not be required until after 2030. As stated previously, the TWG Agreement was a negotiated agreement, submitted to EPA, representing diverse interests. EPA evaluated the TWG Alternative to determine whether it was consistent with our framework for better than BART alternatives. Thus, although a few commenters may believe that the timeframes for compliance in the TWG Alternative are too stringent, the TWG Alternative is consistent with our proposed framework and it is consistent with the level of control in Appendix B to the TWG Agreement, which the operator and owners of NGS, as well as CAP, two tribes and two environmental organizations, have determined is acceptable.

As stated elsewhere in the RTC, we disagree with the assertion that BART for NGS is an emission limit associated with SNCR (0.15 lb/MMBtu) or a less stringent limit associated with SCR (0.06 or 0.07 lb/MMBtu). Therefore, the additional time for compliance suggested by the commenters using higher BART Benchmarks or $NO_X$ Caps is not appropriate. The commenters further assert that NGS could comply with a limit of 0.07 lb/MMBtu in 2032 and 2033 and still maintain total emissions below the 2009–2044 $NO_X$ Cap. EPA disagrees with commenters that the ''unused headroom'' warrants additional time to comply with the limit of 0.07 lb/MMBtu. The emission estimates that EPA presented in our Supplemental Proposal for the TWG Alternative involved projecting future emissions to 2044 based on average heat input at NGS over 2001–2008. Heat input in the future is expected to be variable and could possibly remain higher than average over an extended period of time, significantly affecting the total flexibility or compliance margin. EPA's analysis was provided simply to assess whether operation consistent with the requirements under each TWG Alternative (A1–A3) could reasonably be determined to maintain emissions below the 2009–2044 $NO_X$ Cap and were not intended to represent actual year-by-year emissions in the future. Thus, the ''unused headroom'' is theoretical and could be smaller or larger than cited by the commenters.

*L. Other Comments*

*Comment: Disproportionate impacts to tribes.*

The Tonto Apache Tribe and the San Carlos Apache Tribe commented that both the original BART proposal and the proposed TWG Alternative are contrary to the obligations of the United States and its trust responsibilities to Indian Tribes under CAP. The commenters stated that both regulatory programs would have disproportionate impacts on tribes with CAP contracts. The commenters noted that environmental quality is of utmost importance to the tribes, but that clean air is the responsibility of all citizens. Therefore, the commenters assert that because the United States owns 24.3 percent of NGS, the costs of compliance for that 24.3 percent share should be shared among all American people, who will benefit from cleaner air. The commenters urged EPA to develop an alternative regulation that does not place additional burden on Indian Tribes.

*Response:* EPA agrees that our proposed BART determination and the TWG Alternative will impact tribes with CAP water contracts. We note that the Joint Federal Agency Statement on NGS reflects the U.S. Government's recognition of its responsibilities related to NGS and trust responsibility to Indian tribes affected by NGS.

Although EPA is finalizing a BART Benchmark for NGS, the regulatory requirements of this Final Rule will include only the requirements and compliance timeframes for the TWG Alternative as proposed in our Supplemental Proposal. Under the TWG Alternative, emission reductions at NGS would be achieved in phases, including closure of one unit or the equivalent in 2019, and compliance with an emission limit achievable with SCR in 2030. We note that the closure of one unit was possible because of the planned divestment of LADWP and NV Energy from NGS by 2019. Because LADWP and NV Energy are unrelated to CAP, EPA does not expect substantial compliance costs to be borne by Reclamation (and thus, tribes or other CAP water users) due to the first phase of emission reductions at NGS in 2019. EPA further notes that the 2030 compliance date for meeting an emission limit achievable with SCR on two units at NGS is approximately 16 years from the present day. As stated elsewhere in the RTC, the requirements

under BART and the TWG Alternative include emission limits, rather than technology requirements. Thus, 16 years from now, although SCR will be capable of meeting the emission limit, other technologies or options may become available for the operator of NGS to more cost-effectively meet the $NO_X$ emission limit of 0.07 lb/MMBtu.

EPA recognized the potential impacts to tribes of our proposed BART determination and sought ways to provide flexibility and a framework for affected stakeholders to develop alternative approaches to BART. EPA has determined that the TWG Alternative achieves greater emission reductions than would otherwise be achieved under our BART determination, while providing additional time for compliance. This additional time allows the DOI, DOE, and EPA time to work with tribal stakeholders to identify and implement strategies for achieving the goals outlined in the Joint Federal Agency Statement on NGS.

*Comment: EPA lacks authority to regulate NGS*

Several commenters indicated that EPA overstepped its authority and stated that EPA's proposal hinders the state's ability to deal with environmental issues on a local level. One commenter stated that EPA's regulations are an attack on free enterprise, and believes that the agenda of the current administration is to ban all coal-fired power plants regardless of the economic effect.

*Response:* EPA disagrees that it has overstepped its regulatory authority and disagrees that any State has authority to regulate air pollution from sources located on the Navajo reservation. EPA's authority to regulate NGS is established in sections 301(a) and 301(d)(4) of the CAA and the TAR. Section 301(d)(4) authorizes EPA to directly administer provisions of the CAA in Indian country under certain circumstances. The State of Arizona lacks authority to regulate air pollution sources located on the Navajo reservation.

EPA disagrees that the regulations promulgated in this action, which are requirements consistent with the TWG Agreement, constitutes an attack on free enterprise. The TWG Alternative was submitted to EPA by a stakeholder group that had determined it was a more cost-effective approach to continuing to operate NGS than a prior proposal by EPA. EPA considered the direct costs of compliance in our five-factor BART analysis, and although not specifically required in the BART Guidelines, EPA also considered numerous indirect impacts and costs in our analysis of Factor 2. The comment provides no information other than conclusory statements that EPA failed to adequately consider the cost of compliance. EPA also disagrees that there is any agenda or effort to ban coal burning electricity generation. The TWG Agreement, as agreed upon by the members of the TWG, includes a provision that specifies continued operation of NGS as a conventional coal-fired power plant until 2044 when its lease with the Navajo Nation expires. Therefore, this rulemaking does not constitute a ban on burning coal.

*Comment: Lack of Consultation with Tribes.*

The Navajo Nation commented that EPA should improve communication at the start of any rulemakings to ensure that the Navajo Nation can provide meaningful information. The commenter said that even when the Agency develops supporting rule information like the RIA the Navajo Nation would like to be involved as it could impact the Nation. The commenter pointed out that EPA has known for decades that the Navajo Nation would be impacted by regulation of NGS and FCPP. The commenter quoted excerpts from Executive Order 13175—Consultation and Coordination with Indian Tribal Governments and said that the standard for determining if a regulation has tribal implication is not whether it ''impose[s] substantial *direct compliance costs* on tribal governments,'' but rather a regulation has ''substantial *direct effects* on one or more Indian tribes.''

The Navajo Nation stated that it was not consulted during the development of the ANPR and indicated that in August of 2009, one day prior to the ANPR for NGS and FCPP, EPA made a courtesy call to the President of the Navajo Nation. The Navajo Nation believes that if early and meaningful consultation with the Nation had occurred this could have led to an adequate analysis of BART controls and careful examination of non-air quality impacts.

The Gila River Indian Community expressed similar concerns regarding the lack of consultation. During a consultation on August 7, 2012, the commenter stated that it was their understanding that EPA would describe to the Community the proposed regulation prior to the rulemaking being issued. Instead, the commenter said, EPA called the night before issuing the rule, which the commenter said was inadequate and inconsistent with the expectations regarding consultation. The commenter also understood that the rule was to be proposed in September 2012 but it was not proposed until January 2013 and in the meantime several stakeholders provided additional input to the Agency. However, the Community was not consulted during this time. In addition, the Community expects an explanation of the final rule after it is issued by EPA.

The Hopi Tribe also commented on the lack of consultation and involvement of tribes in developing the regulation. The commenter submitted multiple letters to EPA indicating its concern about not being involved in the development of the rule or consulted but without providing pertinent information. In one of the letters, the commenter said that the government acknowledged the Hopi Tribe as a stakeholder and the intention to work with the Tribe; however, contrary to statements in the Joint Federal Agency Statement on NGS to work with tribes, the Hopi Tribe was not included in the TWG.

The Hopi Tribe specifically indicated that it was denied information regarding the TWG Alternative and the development of the alternative, something the commenter pointed out is essential in order to provide relevant and useful comments to EPA. The commenter said that it has submitted two Freedom of Information Act (FOIA) requests to DOI, which included documentation related to NGS and information documenting DOI's representation of the Hopi Tribe during the negotiation of the TWG Alternative. The commenter said that until it has the information requested via FOIA, it is not able to provide written comments on the TWG Alternative.

The Hopi Tribe asserted that it is has been treated differently than other tribal stakeholders in the TWG Agreement. For example, the TWG Agreement states that SRP will advocate to EPA the Navajo Nation's treatment as state (TAS) status. The Hopi Tribe indicated that the TWG Alternative protects the economic interests of the Navajo Nation and the Gila Indian Community but compromises the coal revenues of the Hopi Tribe and contains no mitigation measures for the significant and adverse economic impact. The Hopi Tribe indicated that it will be disproportionately and adversely affected by the reduced capacity at NGS.

The Kaibab Band of Paiute Indians expressed similar concerns regarding the lack of involvement of Indian Tribes and demanded that EPA consider the requests of the Kaibab Paiute. The commenter referred to the TWG Agreement and requested that the Kaibab Paiute Indian Reservation receive $2.5 million of the $5 million

Local Benefit Fund designated for community projects within 100 miles of NGS (the reservation is 60 miles from NGS). Also, the commenter said that the TWG Agreement promotes the development of clean energy, and based on that provision of the agreement, the commenter requested a 250 MW solar farm.

The Tohono O'odham Nation objected that a number of Indian nations that would be substantially affected by the rule were excluded from the TWG. The commenter noted that it is particularly concerned with maintaining CAP water delivery under whatever rule is finalized by EPA.

*Response:* EPA understands the importance of NGS to numerous tribes located in Arizona and the importance of our trust responsibility to Indian tribes affected by NGS. As a result, we have attempted to ensure that these tribes were consulted throughout the rulemaking process. We respectfully disagree that there was a lack of consultation with tribes.

EPA agrees with the Navajo Nation that Executive Order 13175 defines ''policies that have tribal implications'' to refer to regulations or other actions that have substantial direct effects on one or more Indian tribes.[146] We disagree that EPA's discussion of direct compliance costs on tribal governments is not a correct standard for consideration and note that section 5(b) of EO 13175 further states that

> To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute . . .

In our discussion of EO 13175, we included consideration of substantial direct compliance costs to tribal governments, as well as the broader consideration of substantial direct effects on one or more Indian tribes. We conclude that our proposed action on NGS *will* have tribal implications and may have substantial indirect effects on tribes, but will not impose substantial direct compliance costs on Indian tribal governments. We also conclude that this rule is appropriate under the CAA because NGS is a facility that is subject to BART.

In our proposed rule, EPA provided a document that listed all written or telephone correspondence as well as consultation meetings between EPA and Tribes on NGS. Although the commenter suggests that EPA's telephone call to the President of the Navajo Nation one day prior to the signature of the ANPR in August 2009 was our first communication with the Nation on the subject, we note that the timeline includes a meeting between EPA and the Navajo Nation that occurred two months prior to the ANPR to discuss EPA's plans to move forward on an ANPR related to our ongoing BART analyses for FCPP and NGS.[147] EPA further notes that the ANPR was not a proposed rule. The ANPR was an Advanced Notice of Proposed Rulemaking where we provided the public advance notice of our intention to develop rulemakings for FCPP and NGS. EPA included some initial analysis of two of the BART factors and stated that the ''specific purpose of this ANPR is for EPA to collect additional information.'' [148] Subsequent to the publication of the ANPR in the **Federal Register** on August 28, 2009, and prior to our proposed rule on NGS, EPA held four consultation meetings with tribes in 2009, eight consultation meetings with tribes in 2010, eight consultation meetings in 2011, and ten consultation meetings with tribes in 2012.[149] Of these meetings, at least eight were held as group consultation sessions where all tribes in Arizona were invited to participate and were provided the opportunity to request individual consultation meetings as well.[150]

The Navajo Nation, the Hopi Tribe, the Gila River Indian Community, the Tohono O'odham Nation, the Ak-Chin Indian Community, the Pascua Yaqui Tribe, the Fort McDowell Yavapai Nation, and the Yavapai-Apache Nation, and the Inter Tribal Council of Arizona submitted comments to EPA on the ANPR. EPA summarized and provided responses to comments received from tribal governments in the TSD for our proposed rule on NGS.[151] The primary concerns expressed by the tribal governments related to the economic importance of NGS and the relationship of NGS with CAP and Indian Water Settlement Agreements. The Navajo Nation also commented on specific aspects of the five-factor analysis for BART, and the Hopi Tribe submitted an economic study it had commissioned that expresses concern that regulatory actions would force NGS to close. In our proposed rule and in our development of our proposed framework for BART Alternatives, including the credit for early installation of LNB/SOFA, EPA recognized the importance of NGS to tribes in Arizona, both in contributing to the economies of the Navajo Nation and Hopi Tribe, and in serving as a source of electrical power for CAP and a source of revenue to the Lower Colorado River Basin Development Fund, as related to water settlement agreements with numerous tribes in Arizona. Based on this recognition, EPA put forth additional options for greater flexibility in the compliance timeframe and invited stakeholders to develop and submit additional BART Alternatives to EPA for consideration.

Following the publication of our proposed rule on February 5, 2013, EPA engaged in 17 consultation meetings with tribes prior to the January 2014 close of the public comment period.[152] Of these meetings, at least two were held as group consultation sessions where all tribes in Arizona were invited to participate and were provided the opportunity to request individual consultation meetings as well.[153] EPA received comment letters on our proposal and Supplemental Proposal from the Navajo Nation, the Gila River Indian Community, the Tohono O'odham Nation, the Ak-Chin Indian Community, the Tonto Apache Tribe, the San Carlos Apache Tribe, and the Kaibab Band of Paiute Indians.[154] At the request of two tribes for additional time beyond January 6, 2014 to submit comments, EPA agreed that we would consider comments from tribal governments submitted after the close of the comment period. The White Mountain Apache Tribe submitted comments on February 5, 2014.[155] In addition, in response to their request to EPA for information related to NGS, we provided responsive documents to the Hopi Tribe on January 7, 2014.[156] As shown in additional correspondence,

[146] *http://www.gpo.gov/fdsys/pkg/WCPD-2000-11-13/pdf/WCPD-2000-11-13-Pg2806-2.pdf.*

[147] See listed item indicating consultation meeting on June 10, 2009 between Laura Yoshii, Acting Regional Administrator of EPA Region 9, and President Joe Shirley, Jr., of the Navajo Nation, to discuss moving forward on the ANPR for Four Corners Power Plant and NGS. See document titled ''2013_0109 Timeline of all tribal consultations on NGS.docx'' in document number 0005 in the docket for this rule.

[148] See 74 FR 44313 at 44314 (August 28, 2009).

[149] See document titled ''2013_0109 Timeline of all tribal consultation on NGS.pdf'' in document number 0005 in the docket for the rule at and document titled ''Updated Timeline of all Tribal Consultation on NGS_for Final Rule.pdf'' in the docket for the rule.

[150] *Id.,* and see, e.g., document 0008 in the docket for the rule.

[151] See page 25 and 26 of the TSD to the Proposed Rule, document 0014 in the docket for this rule.

[152] See document titled ''Updated Timeline of all Tribal Consultation on NGS_for Final Rule.pdf'' in the docket for the rule.

[153] *Id.*

[154] See comment numbers 0340, 0317, 0387, 0402, 0419, and 0421 in the docket for the rule.

[155] See comment number 0440 in the docket for the rule.

[156] See document titled ''2014_0107 EPA Letter to Chairman Honanie with Enclosure 1.pdf'' in the docket for this rule.

the Hopi Tribe requested additional time to submit comments, and EPA again agreed to consider late comments from the Hopi Tribe.[157] EPA did not receive any further comments from the Hopi Tribe.

Several tribes also expressed concern that the Technical Work Group included only two tribes, the Navajo Nation and the Gila River Indian Community, and excluded numerous other tribes that also have a significant economic interest in NGS. EPA recognizes that many tribes were not included in the development of the TWG Agreement. EPA was not involved in the formation of the TWG or any of the negotiations between the members of the TWG in developing the TWG Agreement. In addition, our evaluation of the TWG Agreement was for the sole purpose of determining whether Appendix B to the TWG Agreement meets our framework for a ''better than BART'' Alternative. Therefore, although EPA agrees that many tribes have economic interest in NGS and CAP, EPA does not have any role in the distribution of funds described in the TWG Agreement.

Based on numerous consultation meetings between high-level officials from EPA and elected tribal leaders, beginning in 2009 and extending into 2013, and our development of flexible options for BART Alternatives in response to comments from tribes, EPA considers our consultation on NGS to be consistent with EO 13175 and EPA's policy to engage in early and meaningful consultation with tribes.[158] EPA will provide notification of our Final Rule, in writing, to all tribal governments that submitted comments to EPA on our Proposed Rule or Supplemental Proposal and will provide our written responses to their specific comments. All written correspondence from tribal governments to EPA regarding NGS and our proposed BART determination is available in the docket for this rulemaking.[159]

## V. Summary of Final Action

On February 5, 2013, EPA issued a proposed BART analysis of $NO_X$ controls at NGS. Based on that analysis, EPA proposed a $NO_X$ emission limit of 0.055 lb/MMBtu for all three units within five years of a Final Rule. Our proposed rule also set out a framework for evaluating BART alternatives at NGS. EPA proposed a ''better than BART'' alternative (Alternative 1), consistent with this proposed framework, requiring compliance with a $NO_X$ emission limit of 0.055 lb/MMBtu on one unit per year in 2021, 2022, and 2023. EPA invited stakeholders to submit additional alternatives, consistent with our proposed framework for ''better than BART'' alternatives, to EPA for consideration.

On July 26, 2013, a stakeholder group, known as the TWG, submitted an agreement among seven diverse entities (TWG Agreement) that included an additional BART alternative (Appendix B to the TWG Agreement). In general, this alternative includes closure of one unit at NGS, or curtailment of net generating capacity by an equivalent amount, in 2019 and compliance with an emission limit of 0.07 lb/MMBtu on two units at NGS in 2030. The TWG Agreement also included a provision requiring the owners of NGS to cease conventional coal-fired generation at NGS by the end of 2044. EPA independently evaluated Appendix B to the TWG Agreement to determine whether it complied with the framework we put forth in our Proposed Rule, as well as the statutory and regulatory requirements in the CAA and the RHR.

On October 22, 2013, EPA published a Supplemental Proposal. Our Supplemental Proposal contained a detailed evaluation of Appendix B to the TWG Agreement along with a discussion of our legal rationale for proposing to approve requirements consistent with the TWG Agreement as a ''better than BART'' alternative. Our Supplemental Proposal and this Final Rule refer to our regulations that are generally consistent with Appendix B to the TWG Agreement as the ''TWG Alternative.'' The Supplemental Proposal (i.e., the TWG Alternative) included regulatory requirements to achieve substantial $NO_X$ reductions over time, as well as a cap in cumulative $NO_X$ emissions from NGS over 2009–2044 (2009–2044 $NO_X$ Cap) to ensure that lifetime emissions from NGS under the TWG Alternative do not exceed lifetime emissions that would have otherwise occurred under our proposed BART determination for NGS (BART Benchmark).

Based on our review of all comments we received on the Proposed Rule and Supplemental Proposal, EPA is taking action to finalize requirements consistent with the TWG Agreement, as a ''better than BART'' Alternative (TWG Alternative) put forth in our Supplemental Proposal. EPA is also taking final action to determine that a BART Benchmark, consistent with our proposed BART determination, is appropriate for establishing the 2009–2044 $NO_X$ Cap under the TWG Alternative. EPA is not finalizing our proposed BART determination for NGS in the regulatory requirements of this Final Rule, and EPA is not taking action to finalize Alternative 1, the ''better than BART'' Alternative we put forth in our Proposed Rule.

This Final Action is expected to result in over an 80 percent reduction in $NO_X$ emissions and to significantly reduce the impact of NGS on visibility at 11 mandatory Class I Federal areas. EPA's action to finalize requirements consistent with the TWG Agreement as a ''better than BART'' alternative for NGS will ensure that lifetime $NO_X$ emissions from NGS do not exceed the BART Benchmark.

## VI. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action will finalize a source-specific FIP for a single generating source. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons. . . .'' 44 U.S.C. 3502(3)(A). Because the final FIP applies to a single facility, Navajo Generating Station, the Paperwork Reduction Act does not apply. *See* 5 CFR 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

[157] See document titled ''2014_0131 Letter from Chairman Honanie.pdf'' and document titled ''2014_0206 EPA Response to Chairman Honanie_Hopi Tribe.pdf'' in the docket for this rule.

[158] The EPA policy on Consultation and Coordination with Indian Tribes is posted on the following Web site: *http://www.epa.gov/tribal/consultation/consult-policy.htm.*

[159] See Appendix A (List of Written Comments) to the RTC and the docket for this rulemaking.

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid 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 Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this final action will not have a significant economic impact on a substantial number of small entities. The Navajo Generating Station is not a small entity and the FIP for Navajo Generating Station being finalized today does not impose any compliance requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985). We recognize that several tribes located in Arizona have expressed concerns regarding potential indirect effects of this Final Rule; however, these indirect effects are not direct compliance costs or requirements on small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This rule will impose an enforceable duty on the private sector owners of Navajo Generating Station. However, this rule does not contain a Federal mandate that may result in expenditures of $100 million (in 1996 dollars) or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA's estimate for the total annual cost to install and operate SCR on all three units at NGS if it had been required to comply with BART does not exceed $100 million (in 1996 dollars) in any one year. Because we are finalizing requirements consistent with Appendix B to the TWG Agreement, which provides more flexibility than EPA's proposed BART determination and would, at most, require installation and operation of SCR on two units, rather than three units at NGS, EPA expects the total annual cost of implementing the TWG Alternative to also not exceed $100 million (in 1996 dollars). Thus, this rule is not subject to the requirements of sections 202 or 205 of 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 rule will not impose direct compliance costs on the Navajo Nation, and will not preempt Navajo law. This final action will reduce the emissions of $NO_X$ from a single source, the Navajo Generating Station.

*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 in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final action requires emission reductions of $NO_X$ at a specific stationary source located in Indian country. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. EO 13175 defines ''policies that have tribal implications'' to refer to regulations or other actions that have substantial direct effects on one or more Indian tribes.

EPA has concluded that this Final Action will have tribal implications based on the direct relationship between NGS and the Navajo Nation. In addition, EPA anticipates that the following direct and indirect effects may result from the TWG Alternative and Reclamation's ownership interest in NGS: Decreased revenues to the Hopi Tribe and the Navajo Nation associated with the closure of one unit or curtailment of electricity generation in 2019; and increased water costs to tribes associated with the installation of controls to meet an emission limit of 0.07 lb/MMBtu in 2030. However, it will neither pre-empt Tribal law nor impose substantial direct compliance costs on tribal governments (no tribal government is an owner or participant in NGS and therefore no tribal government will be required to pay direct costs of compliance). We note that the Navajo Nation has the option to purchase up to a 170 MW share of NGS in 2019. EPA understands that the Navajo Nation has not yet made its decision and therefore, currently, no tribal government is a Participant in NGS.

The owners of NGS, together with the Navajo Nation, the Gila River Indian Community, and several other stakeholders, submitted the TWG Agreement to EPA that would provide compliance flexibility to the owners and result in greater reasonable progress than BART toward the national visibility goal. This TWG Alternative involves closure or curtailment of production on one unit of NGS and installation of add-on pollution controls to the remaining two units. EPA issued a Supplemental Proposal proposing to find that the TWG Alternative met the requirements of the CAA and RHR. Today, EPA is finalizing requirements consistent with the TWG Agreement. Because the TWG Alternative involves the closure or curtailment of production on one unit and an associated decline in the amount of coal mined and combusted, to the extent that taxes or royalties paid to the Hopi Tribe and the Navajo Nation by the operators of Navajo Generating Station and the Kayenta Mine, are tied to the amount of coal that is mined or the amount of electricity that is generated at NGS, the revenues to the Hopi Tribe and Navajo Nation may be expected to decline. In addition, under the TWG Alternative, when the installation of add-on pollution controls occurs in 2030, EPA expects the CAWCD variable OM&R water rate to increase, affecting tribes with allocations of CAP water.

EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA first put forth an

ANPR on August 28, 2009 to accept comment on preliminary information provided by FCPP and NGS and to begin the consultation process with the Federal Land Managers and affected tribes.

EPA received numerous comments on the ANPR from tribes and tribal organizations, including the Navajo Nation, Hopi Tribe, Gila River Indian Community, Ak-Chin Indian Community, Tohono O'odham Nation, Pascua Yaqui Tribe, Fort McDowell Yavapai Nation, Yavapai-Apache Nation, and the Inter Tribal Council of Arizona. Comments from the Navajo Nation on NGS and from the Hopi Tribe focused on the significant contribution of coal-related royalties, taxes, and employment at NGS and the Kayenta Mine to the economies of the Navajo Nation and the Hopi Tribe. Comments from the Gila River Indian Community, the Tohono O'odham Nation, and other tribes located in Arizona focused on the importance of continued operation of NGS as a source of power to CAP, in order for the federal government to meet obligations under existing water settlement agreements. The importance to tribes of continued operation of NGS and affordable water costs cannot be overemphasized.

Given the extent of federal and tribal interests in NGS and the federal government's trust responsibility to Indian tribes, on January 4, 2013, EPA, DOI, and DOE signed a joint federal agency statement committing to collaborate on several short- and long-term goals, including analyzing and pursuing strategies for providing clean, affordable and reliable power, affordable and sustainable water, and sustainable economic development to key stakeholders who currently depend on NGS.[160] The partner agencies have already begun to work together with stakeholders to identify and undertake actions that support implementation of BART, including seeking funding to cover expenses for pollution control or other necessary upgrades for the federal portion of NGS. The agencies have also begun work to jointly support a phase 2 report to analyze a full range of clean energy options for NGS. Finally, the agencies intend to work with stakeholders to develop a roadmap for achieving long-term, innovative clean energy solutions for NGS.

In our February 5, 2013 Proposed Rule, EPA exercised discretion to include in our analysis of Factor 2 (Energy and Non-Air Quality Impacts), an examination of the viability of continued operation of NGS if new $NO_X$ controls are required, to address the concern expressed by numerous tribes that a BART determination requiring SCR would force NGS to close. Our analysis showed that although SCR would increase the cost of electricity generation at NGS, installing and operating SCR at NGS would still be less costly than replacing NGS with power purchased from elsewhere in the West.[161] However, we also recognized that the timing of regulatory compliance is an important consideration given potential ownership changes and other requirements related to the extension of the NGS lease and other rights-of-way agreements. As part of our Factor 2 analysis, we also estimated potential water rate increases to tribes.[162] As discussed in our proposed rule, EPA considers the potential economic impacts to tribes to argue for flexibility in the compliance timeframe for NGS.

In addition to our proposed BART determination for NGS, EPA also proposed a framework for evaluating alternatives to BART that provide options for flexibility in achieving emission reductions at NGS. EPA proposed an alternative to BART consistent with our proposed framework and invited stakeholders to submit other alternatives to BART that reduce $NO_X$ emissions at NGS while providing long-term, sustainable benefits for tribes.[163] We noted that the extended timeframe for compliance would not, in itself, avoid or mitigate increases in water rates for tribes located in Arizona; however, it would provide time for the collaborating federal agencies to explore options to avoid or minimize potential impacts to tribes, including seeking funding to cover the expenses for the federal portion of pollution control at NGS.[164]

Following our Proposed Rule, the TWG, which included the Navajo Nation, the Gila River Indian Community, and the Interior, together with four additional groups, submitted their agreement (TWG Agreement) that contained an additional BART alternative for consideration (Appendix B to the TWG Agreement). Although EPA was not part of the TWG, we note that the TWG Agreement included seven elements, including elements directly or indirectly related to tribes, i.e., commitments by Interior to mitigate potential impacts from EPA's final BART rule to Affected Tribes and a commitment by SRP to make funds available for a Local Benefit Fund for community improvement projects within 100 miles of NGS or the Kayenta Mine.[165]

EPA has met with tribes on numerous occasions to discuss the significance of NGS to tribal economies and tribal water interests in Arizona.[166] Consultations with tribes included potential economic impacts associated with a BART determination for NGS, as well as potential impacts from EPA's Mercury and Air Toxics Standards (MATS) rulemaking.

In recognition of the unusual complexity of regulating NGS, representatives from EPA, including the Assistant Administrator and the Deputy Assistant Administrator for the Office of Air and Radiation and the Regional Administrator for Region 9, visited NGS and affected communities in the area. EPA officials have also met with additional stakeholders, at various locations, including EPA offices in San Francisco, California and Washington, DC, and offices of individual tribal governing councils and the Inter Tribal Council of Arizona.

Following the publication of our proposed rule on February 5, 2013, EPA engaged in 17 consultation meetings with tribes prior to the January 2014 close of the public comment period.[167] Of these meetings, at least two were held as group consultation sessions where all tribes in Arizona were invited to participate and were provided the opportunity to request individual consultation meetings as well.[168] EPA received comment letters on our proposal and Supplemental Proposal

[160] See *Joint Federal Agency Statement Regarding Navajo Generating Station,* dated January 4, 2013, in the docket for this proposed rulemaking.

[161] See Factor 2 analysis, 78 FR 8281–8284 (February 5, 2013).

[162] *Id.*

[163] *Id.* at 8291.

[164] *Id.* at 8289.

[165] As described in our Supplemental Proposal (78 FR 62512, October 22, 2013), the seven elements of the TWG Agreement were (1) a description of a ''Reasonable Progress Alternative to BART'' (Appendix B to the TWG Agreement); (2) a study of options by Reclamation for replacing the federal share of energy being generated from NGS with low-emitting energy; (3) commitments by Interior to reduce or offset emissions of carbon dioxide ($CO_2$) by three percent per year and facilitate the development of clean energy resources; (4) commitments by Interior to mitigate potential impacts from EPA's final BART rule to Affected Tribes; (5) a commitment by Interior to carry out the Phase 2 Study by the National Renewable Energy Laboratory (NREL) for the purposes of studying options for the future of NGS; (6) a commitment by SRP to make funds available for a Local Benefit Fund for community improvement projects within 100 miles of NGS or the Kayenta Mine; and (7) a summary of obligations of the Parties to the Agreement and miscellaneous legal provisions.

[166] See document titled ''Updated Timeline of All Tribal Consultations on NGS for Final Rule.docx'' in the docket for this rulemaking.

[167] See document titled ''Updated Timeline of all Tribal Consultation on NGS_for Final Rule.pdf'' in the docket for the rule.

[168] *Id.*

from the Navajo Nation, the Gila River Indian Community, the Tohono O'odham Nation, the Ak-Chin Indian Community, the Tonto Apache Tribe, the San Carlos Apache Tribe, and the Kaibab Band of Paiute Indians.[169] At the request of two tribes for additional time beyond January 6, 2014 to submit comments, EPA exercised our discretion to accept comments from tribal governments after the close of the comment period. The White Mountain Apache Tribe submitted comments on February 5, 2014.[170] In addition, in response to their request to EPA for information related to NGS, we provided responsive documents to the Hopi Tribe on January 7, 2014.[171] As shown in additional correspondence, the Hopi Tribe requested additional time to submit comments, and EPA continued to exercise our discretion to accept late comments from the Hopi Tribe.[172] Our separate response to comments document contains a summary of all substantive comments and EPA's responses to those comments.

Several tribes expressed concern that the Technical Work Group included only two tribes, the Navajo Nation and the Gila River Indian Community, and excluded numerous other tribes that also have a significant economic interest in NGS. Several tribes also asserted that the Proposed Rule and Supplemental Proposal have disproportionate impacts on tribes with CAP water settlements and urged EPA to develop an alternative regulation that does not place an additional burden on Indian tribes. Another tribe requested that a portion of the funds identified in the TWG Agreement be designated to their tribe.

EPA recognizes that many tribes did not participate in the development of the TWG Agreement. EPA was not involved in the formation of the Technical Work Group or any of the negotiations between the members of the TWG in developing the TWG Agreement. In addition, our evaluation of the TWG Agreement was for the sole purpose of determining whether the TWG Alternative (Appendix B to the TWG Agreement) meets our framework for a ''better than BART'' Alternative. Therefore, although EPA agrees that many tribes have economic interests in NGS and CAP, EPA did not have a role in the TWG Agreement and does not have any role in the distribution of funds described in the TWG Agreement.

EPA recognizes that our final action will have tribal implications. Because we are taking action to finalize requirements consistent with the TWG Agreement, EPA anticipates that increases in CAP water costs as a result of the installation of new air pollution controls at NGS would not occur until 2030. In addition, as stated elsewhere, EPA has committed to collaborating with other federal agencies to explore options to avoid or minimize potential impacts to tribes, including seeking funding to cover the expenses for the federal portion of pollution control at NGS.

In summary, EPA has taken numerous steps, as described in the preceding paragraphs, to evaluate the potential impacts on Tribes and to identify and provide the flexibility for others to develop alternative approaches that would meet the requirements of the CAA and the RHR while being as sensitive as possible to concerns raised by Tribes. Through the Joint Federal Agency Statement on NGS, the federal government has recognized its obligations through its trust responsibility and through its specific historical and ongoing involvement with NGS and water rights settlements with Tribes. That agreement reflects our commitment to ongoing engagement with affected Tribes and to the pursuit of a long-term solution for electricity generation that is protective of the economic interests of Tribes and public health and the environment.

Based on numerous consultation meetings between high-level officials from EPA and elected tribal leaders, beginning in 2009 and extending into 2013, and our development of flexible options for BART Alternatives in response to comments from tribes, EPA considers our consultation on NGS to be consistent with EO 13175 and EPA's policy to engage in early and meaningful consultation with tribes.[173]

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it requires emissions reductions of $NO_X$ from a single stationary source. Because this action only applies to a single source and is not a rule of general applicability, it is not economically significant as defined under Executive Order 12866, and does not have a disproportionate effect on children. However, to the extent that the rule will reduce emissions of $NO_X$, which contributes to ozone formation, the rule will have a beneficial effect on children's health by reducing air pollution that causes or exacerbates childhood asthma and other respiratory issues.

### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable VCS. For the measurements listed below, there are a number of VCS that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR Part 60, Appendices A and B) noted next to the measurement

[169] See comment numbers 0340, 0317, 0387, 0402, 0419, and 0421 in the docket for the rule.

[170] See comment number 0440 in the docket for the rule.

[171] See document titled ''2014_0107 EPA Letter to Chairman Honanie with Enclosure 1.pdf'' in the docket for this rule.

[172] See document titled ''2014_0131 Letter from Chairman Honanie.pdf'' and document titled ''2014_0206 EPA Response to Chairman Honanie_ Hopi Tribe.pdf'' in the docket for this rule.

[173] EPA's policy on Consultation and Coordination with Indian Tribes is posted on the following Web site: *http://www.epa.gov/tribal/consultation/consult-policy.htm.*

requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

*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.

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 increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

EPA recognizes that numerous commenters have stated that this rulemaking has environmental justice implications because NGS, which is among the largest coal-fired power plants in the country, is located on the Navajo Nation. Commenters have also expressed concern that the documents associated with this rule are too technical for community members to understand. Some commenters have also argued that EPA should apply the same standard to NGS as other coal-burning power plants (e.g., Four Corners Power Plant), and that the extended compliance timeframe for NGS is an environmental justice issue.

Fair treatment and meaningful involvement are critical components of environmental justice and EPA takes fair treatment and meaningful involvement seriously. We provided numerous opportunities for tribal governments, environmental and tribal non-governmental organizations, and other interested stakeholders to provide input in the development of our Proposed Rule, Supplemental Proposal, and Final Rule for NGS.

As discussed in more detail in the RTC, EPA began our public involvement process for a BART determination for NGS in 2009, when we published an Advanced Notice of Proposed Rulemaking (ANPR). During 2009 through 2012, EPA met with various stakeholders, including tribal governments and Navajo environmental groups to discuss NGS and hear concerns related to a BART determination for this facility.[174] During the 11-month comment period for our Proposed Rule, EPA continued to meet with stakeholders to discuss our proposed BART determination for NGS and our framework for ''better than BART'' alternatives.[175]

On July 26, 2013, the TWG submitted the TWG Agreement to EPA for consideration. EPA posted the TWG Agreement to our docket on the same day to provide the public an opportunity to review it.[176] On September 25, 2013, EPA posted a Supplemental Proposal, along with supporting documents, to the docket to allow for early review by interested parties.[177] The Supplemental Proposal was published in the **Federal Register** on October 22, 2013. The comment period for the Supplemental Proposal closed on the same day as the BART proposal, on January 6, 2014. The Supplemental Proposal also included notice of five open house and public hearing events EPA scheduled throughout Arizona in November 2013. The open houses allowed members of the public an opportunity to talk with representatives from EPA and ask questions. EPA held events at the LeChee Chapter House, located on the Navajo Nation, as well as in Page, Arizona, and provided oral interpretation services between English and Diné (the Navajo language). EPA also held an event at the Hopi Day School, located in Kykotsmovi, the seat of the Hopi tribal government.[178] Finally, we also held events in Phoenix and in Tucson, Arizona, to allow stakeholders in central and southern Arizona, representing CAP water interests and several tribes receiving CAP water, the opportunity to provide comment and talk with representatives from EPA.

EPA understands that the TSD and **Federal Register** notices include technical information that may be difficult to understand. EPA provided Fact Sheets and handouts, written in plain language, at the open house and public hearing events.[179] EPA representatives were also present at the events to discuss and explain our Proposals.

EPA recognizes that some commenters may view the timeframe for compliance under EPA's framework for BART Alternatives as an environmental justice issue. We note that the Navajo Nation and other Tribes expressed concern with the potential economic impacts of this rulemaking. The flexibility we provided has allowed for a balance between these considerations.

We further note that the LNB/SOFA credit, an important component of the timeframe under our ''better than BART'' framework, was based on real, actual emission reductions beginning in 2009 that were voluntary and not required by any rule or regulation. We also note that the TWG Alternative, which calls for closure of one unit in 2019 (or equivalent curtailment), will result not only in reductions of $NO_X$, but also reductions of several other pollutants, including $SO_2$, PM, $CO_2$, and hazardous air pollutants. Although the compliance date of emission limit for two units (achievable with the installation of SCR) under the TWG Alternative is in 2030, over 2009 to 2044, the TWG Alternative will result in greater $NO_X$ reductions than would have been achieved under BART, will result in step-wise reductions of $NO_X$ and additional pollutants that affect visibility or human health, and will provide an enforceable mechanism to ensure that NGS ceases conventional coal-fired electricity generation at NGS by the end of 2044. All of these measures will increase the level of environmental protection for communities affected by NGS.

[174] See, for example, document number 0232 in the ANPR docket at EPA–R09–OAR–2009–0598, and document numbers 0008 and 0009 in the docket for this rule at EPA–R09–OAR–2013–0009.

[175] See, for example, document number 0150, 0152, 0166, 0173, 0302, and 0303 in the docket for this rule.

[176] See document number 0122 in the docket for this rulemaking.

[177] See document numbers 0182, 0183, and 0184 in the docket for this rulemaking.

[178] EPA engaged with the government of the Hopi Tribe to search for an oral interpreter between English and the Hopi language, but the Hopi Tribe was unable to locate anyone to provide those services.

[179] See document 0219 in the docket for this rulemaking.

*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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this action is a rule of particular applicability. This rule finalizes a source-specific FIP for a single generating source.

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 7, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

**List of Subjects in 40 CFR Part 49**

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 28, 2014.

**Gina McCarthy,**

*Administrator.*

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

■ 2. Section 49.5513 is amended by adding paragraph (j) to read as follows:

**§ 49.5513 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.**

* * * * *

(j)(1) *Applicability.* Regional Haze Best Available Retrofit Technology limits for $NO_X$ for this plant are in addition to the requirements of paragraphs (a) through (i) of this section. The provisions of this paragraph (j) are severable, and if any provision of this paragraph (j), or the application of any provision of this paragraph (j) to any owner/operator or circumstance, is held invalid, the application of such provision to other owner/operators and other circumstances, and the remainder of this paragraph (j), will not be affected thereby. Nothing in this paragraph (j) allows or authorizes any Unit to emit $NO_X$ at a rate that exceeds its existing emission limit of 0.24 lb/MMBtu as established by EPA permit AZ 08–01 issued on November 20, 2008.

(2) *Definitions.* Terms not defined below have the meaning given to them in the Clean Air Act or EPA's regulations implementing the Clean Air Act and in paragraph (c) of this section. For purposes of this paragraph (j):

(i) *2009–2029 $NO_X$ Cap* means a limit on emissions from Units 1, 2, and 3 of no more than 416,865 tons of $NO_X$.

(ii) *2009–2044 $NO_X$ Cap* means a limit on emissions from Units 1, 2, and 3 of no more than 494,899 tons of $NO_X$.

(iii) *Boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

(iv) *Coal-fired unit* means any of Units 1, 2, or 3 at Navajo Generating Station.

(v) *Continuous Emission Monitoring System or CEMS* means the equipment required by 40 CFR part 75 and this paragraph (j).

(vi) *Departing Participant* means either Los Angeles Department of Water and Power or Nevada Energy, also known as NV Energy or Nevada Power Company.

(vii) *Emission limitation or emission limit* means the federal emissions limitation required by this paragraph.

(viii) *Existing Participant* means the existing owners of NGS: Los Angeles Department of Water and Power; Nevada Energy, also known as NV Energy or Nevada Power Company; Salt River Project Agricultural Improvement and Power District; Arizona Public Service Company; and Tucson Electric Company, together with the United States, acting through the Bureau of Reclamation.

(ix) *lb* means pound(s).

(x) *Low-$NO_X$ Burners and Separated Over-Fire Air* or *LNB/SOFA* means combustion controls installed on each Unit between 2009 and 2011.

(xi) *Navajo Nation* means the Navajo Nation, a federally recognized Indian Tribe.

(xii) *NGS or Navajo Generating Station* means the steam electric generating station located on the Navajo Reservation near Page, Arizona, consisting of Units 1, 2, and 3, each 750 MW (nameplate rating), the switchyard facilities, and all facilities and structures used or related thereto.

(xiii) *$NO_X$* means nitrogen oxides expressed as nitrogen dioxide ($NO_2$).

(xiv) *Owner/operator* means any person(s) who own(s) or who operate(s), control(s), or supervise(s) one more of the Units of the Navajo Generating Station.

(xv) *MMBtu* means million British thermal unit(s).

(xvi) *Operating hour* means any hour that fossil fuel is fired in the unit.

(xvii) *Unit* means any of Units 1, 2, or 3 at Navajo Generating Station.

(xviii) *Valid data* means CEMs data that is not out of control as defined in 40 CFR part 75.

(3) *"Better than BART" alternative for $NO_X$.* Total cumulative $NO_X$ emissions from Units 1, 2, and 3, from January 1, 2009 to December 31, 2044, may not exceed the 2009–2044 $NO_X$ Cap. The owner/operator must implement the applicable operating scenario, under paragraph (j)(3)(i) of this section, to ensure $NO_X$ emission reductions sufficient to maintain total cumulative $NO_X$ emissions from Units 1, 2, and 3 below the 2009–2044 $NO_X$ Cap.

(i) *Operating scenarios to comply with 2009–2044 $NO_X$ Cap.* The owner/operator must comply with one of the following operating scenarios based on the applicability provisions in paragraph (j)(3)(ii) of this section.

(A) *Alternative A1.* (*1*) By December 31, 2019, the owner/operator must permanently cease operation of one coal-fired Unit; and

(*2*) By December 31, 2030, the owner/operator must comply with a $NO_X$ emission limit of 0.07 lb/MMBtu, based on a rolling average of 30 boiler operating days, on each of the two remaining coal-fired Units.

(*3*) The owner/operator must permanently cease operation of Units 1, 2, and 3 if total cumulative emissions of $NO_X$ from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, exceed the 2009–2044 $NO_X$ Cap at any time prior to December 31, 2044.

(B) *Alternative A2.* (*1*) By December 31, 2019, the owner/operator must

permanently cease operation of one coal-fired Unit; and

(*2*) By December 31, 2019, the owner/operator may increase net generating capacity of the remaining two coal-fired Units by a combined total of no more than 189 MW. The actual increase in net generating capacity shall be limited by the sum of 19 MW and the ownership interest, in net MW capacity, purchased by the Navajo Nation by December 31, 2019. Nothing in paragraph (j) of this section alters any regulatory requirements, including those for pre-construction permitting, associated with any increase in the net generating capacity of the Unit(s).

(*3*) By December 31, 2030, the owner/operator must comply with a $NO_X$ emission limit of 0.07 lb/MMBtu, based on a rolling average of 30 boiler operating days, on each of the two remaining coal-fired Units.

(*4*) The owner/operator must permanently cease operation of Units 1, 2, and 3 if total cumulative emissions of $NO_X$ from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, exceed the 2009–2044 $NO_X$ Cap at any time prior to December 31, 2044.

(C) *Alternative A3.* (*1*) By December 31, 2019, the owner/operator must reduce the net generating capacity of NGS by no less than 561 MW. The actual reduction in net generating capacity of NGS shall be determined by the difference between 731 MW and the ownership interest, in net MW capacity and limited to 170 MW, purchased by the Navajo Nation by December 31, 2019.

(*2*) By December 31, 2030, the owner/operator must comply with a $NO_X$ emission limit of 0.07 lb/MMBtu, based on a rolling average of 30 boiler operating days, on two Units.

(*3*) The owner/operator must permanently cease operation of Units 1, 2, and 3 if total cumulative emissions of $NO_X$ from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, exceed the 2009–2044 $NO_X$ Cap at any time prior to December 31, 2044.

(D) *Alternative B.* (*1*) Total cumulative $NO_X$ emissions from Units 1, 2, and 3 may not exceed the 2009–2044 $NO_X$ Cap or the 2009–2029 $NO_X$ Cap.

(*2*) The owner/operator must cease operation of Units 1, 2, and 3 if total cumulative emissions of $NO_X$ from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, exceed the 2009–2029 $NO_X$ Cap at any time prior to December 31, 2029. The owner/operator may restart operation of Units 1, 2, and 3 after January 1, 2030, as long as total cumulative emissions of $NO_X$ from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii) of this section, do not exceed the 2009–2044 $NO_X$ Cap.

(*3*) The owner/operator must permanently cease operation of Units 1, 2, and 3 if total cumulative emissions of $NO_X$ from Units 1, 2, and 3, based on annual reports required under paragraph (j)(4)(ii)), exceed the 2009–2044 $NO_X$ Cap at any time prior to December 31, 2044.

(ii) *Applicability of alternatives.* (A) Alternative A1 applies if by December 31, 2019, one of the following occurs:

(*1*) Both of the Departing Participants retire their ownership interests in NGS by December 31, 2019, and the Navajo Nation does not purchase an ownership interest in NGS; or

(*2*) Both of the Departing Participants sell their ownership interests in NGS to Existing Participants, and the Navajo Nation does not purchase an ownership interest in NGS; or

(*3*) One of the Departing Participants retires its ownership interest in NGS and the other Departing Participant sells its ownership interest in NGS to an Existing Participant, and the Navajo Nation does not purchase an ownership interest in NGS.

(B) Alternative A2 applies if by December 31, 2019, one of the following occurs:

(*1*) Both of the Departing Participants sell their ownership interests in NGS to Existing Participants, the Navajo Nation has purchased an ownership interest in NGS, and the owner/operator has increased net generating capacity of the two remaining Units by a combined total of no more than 189 MW; or

(*2*) One of the Departing Participants retires its ownership interest in NGS and the other Departing Participant sells its ownership interest in NGS to an Existing Participant, the Navajo Nation has purchased an ownership interest in NGS, and the owner/operator has increased net generating capacity of the two remaining Units by a combined total of no more than 189 MW.

(C) Alternative A3 applies if by December 31, 2019, one of the following occurs:

(*1*) Both of the Departing Participants sell their ownership interests in NGS to Existing Participants, the Navajo Nation has purchased an ownership interest in NGS, and the owner/operator has not increased net generating capacity of the Units at NGS; or

(*2*) One of the Departing Participants retires its ownership interest in NGS and the other Departing Participant sells its ownership interest in NGS to an Existing Participant, the Navajo Nation has purchased an ownership interest in NGS, and the owner/operator has not increased net generating capacity of the Units at NGS.

(D) Alternative B applies if, by December 31, 2019, if one of the following occurs:

(*1*) Any of the Departing Participants sell their ownership interests in NGS to a Party other than the Navajo Nation that is not an Existing Participant, or

(*2*) Any of the Departing Participants remains as a participant in NGS.

(iii) By December 22, 2044, the owner/operator shall permanently cease conventional coal-fired electricity generation by all coal-fired Units at NGS.

(4) *Reporting and implementation requirements for BART.* (i) No later than December 1, 2019, the owner/operator must notify EPA of the applicable Alternative for ensuring compliance with the 2009–2044 $NO_X$ Cap.

(ii) Beginning in 2015, and annually thereafter until the earlier of December 22, 2044 or the date on which the owner/operator ceases conventional coal-fired electricity generation by all coal-fired Units at NGS, the owner/operator must report to EPA, the annual heat input, the annual emissions of sulfur dioxide, carbon dioxide, and $NO_X$ from the previous full calendar year. In addition, the owner/operator must also report total cumulative emissions of $NO_X$ from NGS to assure compliance with the 2009–2044 $NO_X$ Cap and the 2009–2029 $NO_X$ Cap (if applicable). The owner/operator must make this report available to the public, either through a link on its Web site or directly on its Web site. The report must be made available within 30 days of the submittal deadline associated with the annual emission inventory required by the Part 71 Operating Permit for NGS.

(iii) No later than December 31, 2020, the owner/operator must submit an application to revise its existing Part 71 Operating Permit to incorporate the requirements and emission limits of the applicable Alternative to BART under paragraph (j)(3) of this section. The Part 71 Operating Permit for NGS must incorporate practically enforceable limits for $NO_X$ of 0.24 lb/MMBtu, on a 30-day rolling average basis, for each Unit equipped with LNB/SOFA, and 0.07 lb/MMBtu, on a rolling average basis of 30 boiler operating days, for each Unit equipped with SCR, as federally enforceable permit conditions.

(iv) In addition to the requirements of paragraphs (j)(4)(i), (ii) and (iii) of this section, if Alternative B applies, the owner/operator must submit annual Emission Reduction Plans to the Regional Administrator.

(A) No later than December 31, 2019 and annually thereafter through December 31, 2028, the owner/operator must submit an Emission Reduction Plan containing anticipated year-by-year emissions from Units 1, 2, and 3 covering the period from 2020 to 2029 that will assure that the operation of NGS will result in emissions of $NO_X$ that do not exceed the 2009–2029 $NO_X$ Cap. The Emission Reduction Plan may contain several potential operating scenarios and must set forth the past annual actual emissions and the projected emissions for each potential operating scenario. Each potential operating scenario must demonstrate compliance with the 2009–2029 $NO_X$ Cap. The Emission Reduction Plan shall identify emission reduction measures that may include, but are not limited to, the installation of advanced emission controls, a reduction in generation output, or other operating strategies determined by the owner/operator. The owner/operator may revise the potential operating scenarios set forth in the Emission Reduction Plan, provided the revised plan ensure that $NO_X$ emissions remain below the 2009–2029 $NO_X$ Cap.

(B) No later than December 31, 2029 and annually thereafter, the owner/operator shall submit an Emission Reduction Plan containing year-by-year emissions covering the period from January 1, 2030 to December 31, 2044 that will assure that the operation of NGS will result in emissions of $NO_X$ that do not exceed the 2009–2044 $NO_X$ Cap. The Emission Reduction Plan shall identify emission reduction measures that may include, but are not limited to, the installation of advanced emission controls, a reduction in generation output, or other operating strategies determined by the owner/operator. The owner/operator may revise the potential operating scenarios set forth in the Emission Reduction Plan, provided the revised plan ensure that $NO_X$ emissions remain below the 2009–2044 $NO_X$ Cap.

(C) The requirement to submit annual Emission Reduction Plans beginning no later than December 31, 2019, shall be incorporated into the Part 71 Operating Permit for NGS as federally enforceable permit conditions.

(5) *Continuous emission monitoring system (CEMS).* (i) At all times, the owner/operator of each unit must maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure $NO_X$, diluent, and stack gas volumetric flow rate from each unit. All hourly valid data will be used to determine compliance with the emission limitations for $NO_X$ in paragraph (j)(3) of this section for each unit. If the CEMs data is not valid, that CEMs data shall be treated as missing data and not used to calculate the emission average. CEMs data does not need to be bias adjusted as defined in 40 CFR part 75. Each required CEMS must obtain valid data for at least 90 percent of the unit operating hours, on an annual basis.

(ii) The owner/operator of each unit shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. In addition to these Part 75 requirements, relative accuracy test audits shall be calculated for both the $NO_X$ pounds per hour measurement and the heat input measurement. The calculation of $NO_X$ pounds per hour and heat input relative accuracy shall be evaluated each time the CEMS undergo relative accuracy testing.

(6) *Compliance determination for $NO_X$ emission limits.* (i) Compliance with the $NO_X$ emission limits under paragraphs (j)(3)(i) of this section shall be determined on a rolling average basis of thirty (30) Boiler Operating Days on a unit by unit basis. Compliance shall be calculated in accordance with the following procedure: Sum the total pounds of $NO_X$ emitted from the Unit during the current Boiler Operating Day and the previous twenty-nine (29) Boiler Operating Days; sum the total heat input to the Unit in MMBtu during the current Boiler Operating Day and the previous twenty-nine (29) Boiler Operating Days; and divide the total number of pounds of $NO_X$ by the total heat input in MMBtu during the thirty (30) Boiler Operating Days. A new 30 Boiler Operating Day rolling average shall be calculated for each new Boiler Operating Day. Each 30 Boiler Operating Day rolling average shall include all emissions that occur during periods within any Boiler Operating Day, including emissions from startup, shutdown, and malfunction.

(ii) If a valid $NO_X$ pounds per hour or heat input is not available for any hour for a Unit, that heat input and $NO_X$ pounds per hour shall not be used in the calculation for that 30 boiler operating day period.

(7) *Recordkeeping.* The owner/operator of each Unit must maintain the following records until the earlier of December 22, 2044 or the date that conventional coal-fired operation of all units at NGS permanently ceases:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results as required by Part 75 and as necessary to calculate each units pounds of $NO_X$ and heat input for each hour.

(ii) Each Boiler Operating Day rolling average emission rate for $NO_X$ calculated in accordance with paragraph (j)(6)(i) of this section.

(iii) Each unit's 30 Boiler Operating Day pounds of $NO_X$ and heat input.

(iv) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 75.

(v) Records of the relative accuracy calculation of the $NO_X$ lb/hr measurement and hourly heat input.

(vi) Any other records required by 40 CFR part 75.

(8) *Reporting.* All reports and notifications under this paragraph (j) must be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, and to the Director of Enforcement Division, U.S. EPA Region IX, at 75 Hawthorne Street, San Francisco, CA 94105.

(i) The owner/operator must notify EPA within two weeks after completion of installation of $NO_X$ control technology on any of the units subject to this section.

(ii) Within 30 days after the first applicable compliance date in paragraph (j)(3) of this section and within 30 days of every second calendar quarter thereafter (i.e., semi-annually), the owner/operator must submit a report that lists for each calendar day, calculated in accordance with paragraph (j)(6) of this section, total lb of $NO_X$ and heat input (as used to calculate compliance per paragraph (j)(6) of this section, for each unit's last 30 boiler operating days. The owner/operator must include the results of the last relative accuracy test audit and the calculated relative accuracy for lb/hr $NO_X$ and heat input performed 45 days prior to the end of that reporting period. The end of the year report shall also include the percent valid data for each $NO_X$, diluent, and flow monitor used in the calculations of compliance with paragraph (j)(6) of this section.

(9) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(10) *Equipment operations.* At all times, including periods of startup, shutdown, and malfunction, the owner/operator shall, to the extent practicable,

maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, or their designee, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(11) *Affirmative defense.* The affirmative defense provisions of paragraphs (c)(2) and (i) of this section do not apply to this paragraph (j).

[FR Doc. 2014–18228 Filed 8–7–14; 8:45 am]

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# FEDERAL REGISTER

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Part III

## Office of Management and Budget

2017 North American Industry Classification System (NAICS) Revision; Notice

## OFFICE OF MANAGEMENT AND BUDGET

### 2017 North American Industry Classification System (NAICS) Revision

**AGENCY:** Executive Office of the President, Office of Management and Budget.

**ACTION:** Notice Regarding Implementation of the Factoryless Goods Producer Classification in NAICS 2017.

**SUMMARY:** Under the authority of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 1104(d)) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(e)), the Office of Management and Budget (OMB) is announcing that the Factoryless Goods Producer (FGP) recommendation will not be implemented in the 2017 NAICS revision. The August 17, 2011, **Federal Register** notice (76 FR 51240–51243) announcing OMB's final decisions for NAICS 2012 required Federal statistical agencies to implement the FGP classification beginning no later than 2017. However, the Economic Classification Policy Committee (ECPC), which advises OMB on periodic revisions to NAICS, recently reported to OMB that results of preliminary research on the effectiveness of survey questions designed to identify Factoryless Goods Producers (FGP) shows inconsistent results. These results indicate that questions tested in the 2012 Economic Census fail to yield responses that provide accurate and reliable identification and classification of FGPs. The ECPC has advised that additional research, testing, and evaluation are required to find a method for accurate identification and classification of FGPs, and that this process could take several years. Given these initial research results and the large number of public comments submitted on the topic of FGPs, OMB here announces that the FGP recommendation will not be implemented in 2017. OMB is taking this action now in order to give the affected agencies notice that the directive of the August 17, 2011, **Federal Register** notice (76 FR 51240–51243) is no longer in force. Without the deadline imposed by the 2017 NAICS revisions, the relevant statistical agencies will now have the opportunity to complete the additional research, testing, and evaluation needed to determine the feasibility of developing methods for the consistent identification and classification of FGPs that are accurate and reliable. This process will also be informed by questions raised in public comments. Results of this research, testing, and evaluation could lead to a different FGP proposal for consideration or implementation. More information about this announcement may be found in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** *Issue date:* August 8, 2014.

**ADDRESSES:** Correspondence concerning this announcement may be sent to: Paul Bugg, 10201 New Executive Office Building, Washington, DC; Telephone: 202–395–3095; fax: 202–395–7245; email: *pbugg@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Paul Bugg, 10201 New Executive Office Building, Washington, DC; Telephone: 202–395–3095; fax: 202–395–7245; email: *pbugg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background of NAICS:* NAICS is a system for classifying establishments (individual business locations) by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments; and (2) to promote uniformity and comparability in the presentation and analysis of statistical data describing the North American economy. Federal statistical agencies use NAICS to collect or publish data by industry. It is also widely used by State agencies, trade associations, private businesses, and other organizations.

Mexico's *Instituto Nacional de Estadística y Geografía* (INEGI), Statistics Canada, and the United States Office of Management and Budget (OMB), through its Economic Classification Policy Committee (ECPC), collaborated on NAICS to make the industry statistics produced by the three countries comparable. NAICS is the first industry classification system developed in accordance with a single principle of aggregation, the principle that producing units that use similar production processes should be grouped together in the classification. NAICS also reflects changes in technology and in the growth and diversification of services in recent decades. Industry statistics presented using NAICS 2012 are comparable, to a large extent, with statistics compiled according to the latest revision of the United Nations' International Standard Industrial Classification (ISIC, Revision 4).

For these three countries, NAICS provides a consistent hierarchical framework for the collection, tabulation, presentation, and analysis of industry statistics used by government policy analysts, by academics and researchers, by the business community, and by the public. Under NAICS, each domestic establishment receives a six-digit code that is generally comparable across the three countries at the five digit level. The sixth digit is reserved for country-specific detail that can vary across the three countries. Thus, under *NAICS United States,* each domestic establishment physically located in the United States is assigned a six-digit code. Establishments located outside the United States, regardless of ownership, are outside the scope of *NAICS United States* and are not coded or included in information collections using NAICS.

*Implementation of the Factoryless Goods Producer Classification:* The August 17, 2011, **Federal Register** notice (76 FR 51240–51243) announcing OMB's final decisions for NAICS 2012 required Federal statistical agencies to implement the FGP classification beginning no later than 2017. In response to the May 22, 2014, **Federal Register** notice soliciting comments on possible changes to NAICS for 2017 (79 FR 29626–29629), OMB's ECPC received input from a wide variety of parties. These comments included approximately 22,000 individual comments addressing Part V of the notice—''Update on the Treatment of Manufacturing Units that Outsource Transformation'' (also commonly identified in responses as the ''ECPC Factoryless Goods Producer'' proposal). Additional information about NAICS, the ECPC, and the FGP recommendation is available at *www.census.gov\naics.*

OMB appreciates the time and effort that went into preparing these responses and offers thanks to all who submitted comments and participated in the consultation. The comments will help inform the ECPC as it works to find a solution to identifying and classifying FGPs consistently. The ECPC, through OMB, will address the comments submitted as part of the regular NAICS review process to develop a full set of recommendations for the 2017 NAICS revision. However, continuing research on agencies' ability to identify FGPs through survey questions combined with the large number of comments on this topic indicate that agencies need an opportunity to perform additional research, testing, and evaluation on FGPs without the burden of simultaneously implementing an unsatisfactory approach to the 2012 NAICS FGP decision for 2017 reference year data. This announcement to remove the requirement for agencies to implement the FGP recommendation by 2017 is designed to provide agencies with that opportunity.

The FGP proposal resulted from the fact that there was no guidance on

where to classify FGPs and, consequently, they could be classified in different industries and different sectors by different programs. This inconsistent classification and the resulting ambiguity in source data may affect the reliability of statistical estimates for these industries throughout the statistical system and thereby affect measures of economic activity such as GDP, employment, and productivity. Inconsistent classification can result in statistical estimates that provide false signals to data users and policy makers relating to both the magnitude and direction of any economic changes.

As indicated in the May 22, 2014, **Federal Register** notice, the agencies represented on the ECPC have been conducting research for several years on how to consistently identify and classify business establishments that are factoryless goods producers. This research included special questions in the 2012 Economic Census. During the comment period that ran from May 22, 2014, to July 21, 2014, this research continued with interviews of 2012 Economic Census respondents who answered inquiries on the purchase of contract manufacturing services (i.e., outsourcing transformation) from manufacturing, wholesale trade, and enterprise support establishments. The interview results exhibited enough inconsistency to convince the ECPC that the questions, as tested in the 2012 Economic Census, would not yield accurate and reliable identification and classification of FGP establishments by industry. Additional research is continuing and further research, testing, and evaluation are being planned that will take place over the next few years to develop a solution for the consistent identification and classification of FGPs that is accurate and reliable. Results of this research, testing, and evaluation could lead to a different FGP proposal for consideration or implementation.

**Howard A. Shelanski,**

*Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. 2014–18766 Filed 8–7–14; 8:45 am]

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Part IV

## Department of Labor

Office of Federal Contract Compliance Programs
41 CFR Part 60–1
Government Contractors, Requirement To Report Summary Data on Employee Compensation; Proposed Rule

**DEPARTMENT OF LABOR**

**Office of Federal Contract Compliance Programs**

**41 CFR Part 60–1**

**RIN 1250–AA03**

## Government Contractors, Requirement To Report Summary Data on Employee Compensation

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Federal Contract Compliance Programs (OFCCP) proposes to amend one of its implementing regulations for Executive Order 11246, Equal Employment Opportunity, which sets forth the reporting obligations of Federal contractors and subcontractors. This notice of proposed rulemaking (NPRM) would amend the regulation by adding a requirement that certain Federal contractors and subcontractors supplement their Employer Information Report (EEO–1 Report) with summary information on compensation paid to employees, as contained in the Form W–2 Wage and Tax Statement (W–2) forms, by sex, race, ethnicity, and specified job categories, as well as other relevant data points such as hours worked, and the number of employees. This summary compensation data collection from Federal contractors and subcontractors by OFCCP is a critical tool for eradicating compensation discrimination. It would enable OFCCP to direct its enforcement resources toward entities for which reported data suggest potential pay violations, and not toward entities for which there is no evidence of potential pay violations. It would also enhance two enforcement objectives: Greater voluntary compliance; and greater deterrence of noncompliant behaviors by contractors and subcontractors. OFCCP seeks to achieve these dual and complementary objectives while minimizing, to the extent feasible, the compliance burden borne by Federal contractors and subcontractors.

**DATES:** To be assured of consideration, comments must be received on or before November 6, 2014.

**ADDRESSES:** You may submit comments, identified by RIN number 1250–AA03, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 693–1313 (for comments of six pages or less).
- *Mail:* Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW., Washington, DC 20210.

*Instructions:* Please submit your comments by only one method. Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission was received by telephoning OFCCP at (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). All comments received by OFCCP, including any personal information provided, will be available for public inspection during normal business hours at Room C–3325, 200 Constitution Avenue NW., Washington, DC 20210, or via the Internet at *www.regulations.gov.* Upon request, individuals who require assistance viewing comments are provided appropriate aids such as readers or print magnifiers. Copies of this NPRM are available in the following formats: Large print, electronic file on computer disk, and audiotape. To schedule an appointment to review the comments and/or to obtain this NPRM in an alternate format, please contact OFCCP at the telephone numbers or address listed above.

**FOR FURTHER INFORMATION CONTACT:** Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY).

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Purpose*

The OFCCP proposes to amend the regulation found at 41 CFR 60–1.7 by adding a requirement that certain Federal contractors and subcontractors (hereinafter ''contractors'') submit additional, readily available data in a new ''Equal Pay Report.'' This report would require the submission of summary data on employee compensation by sex, race, ethnicity, specified job categories, and other relevant data points such as hours worked, and the number of employees. The OFCCP believes that collecting and strategically using this summary data would have a significant deterrent effect and impact on OFCCP's enforcement program. Voluntary compliance and self-assessments by Federal contractors are critical components of this NPRM given the vast number of establishments subject to OFCCP's jurisdiction in comparison to the agency's modest personnel and other resources. The agency estimates that, based solely on 2012 EEO–1 Report data, more than 116,000 establishments are subject to its jurisdiction because they have at least 50 employees and a contract or subcontract in the amount of $50,000 or more. However, this NPRM proposes to cover a subset of these establishments. Informed by the aggregate industry-based data that OFCCP will make available to them, Federal contractors will have the opportunity to conduct meaningful self-assessments of their compensation practices and policies, and make any necessary pay adjustments or other compensation modifications prior to an OFCCP compliance evaluation. Specifically, this NPRM will enhance the quality and quantity of data OFCCP collects. This data, in addition to data collected from publicly available sources, such as the Bureau of Labor Statistics (BLS), are critical to developing a data-driven approach for identifying and focusing OFCCP's evaluations and resources on Federal contractors that have potentially discriminatory compensation differences when compared to an objective industry standard.

This NPRM reflects extensive stakeholder input collected prior to and during a 2011 Advance Notice of Proposed Rulemaking, specific criteria stated in a Presidential Memorandum issued on April 8, 2014, and additional stakeholder input collected during listening sessions held following the release of the Presidential Memorandum (the Memorandum).[1] In the Memorandum, President Barack Obama directed the U.S. Department of Labor (DOL) to develop a compensation data collection proposal that would: (1) Maximize the efficiency and effectiveness of the agency's enforcement and its ability to focus on more likely violators; (2) minimize, to the extent feasible, the burden on Federal contractors and subcontractors, especially small businesses and small nonprofit organizations; and (3) use the data collected to encourage greater voluntary compliance and to identify and analyze industry trends. The Memorandum also encouraged the Department to develop a proposal that relies on existing reporting requirements and frameworks to the extent feasible, and to consider available independent

[1] Presidential Documents, Memorandum of April 8, 2014, ''Advancing Pay Equality Through Compensation Data Collection,'' Memorandum for the Secretary of Labor, April 11, 2014 (79 FR 20751).

studies regarding the collection of compensation data.

Data collection and analysis of data are likely to serve as a disincentive for noncompliance, and are, therefore, effective deterrents. One recent report found that deterring violations before they occur is one part of an ''overall enforcement policy.'' [2] However, deterrence is not often ''incorporated as a central component of how investigations are targeted, conducted, and followed up on, or in the way that penalties are assessed and levied.'' [3] Similarly, researchers have described deterrence as the ''second foundation of traditional enforcement'' with the potential to protect vulnerable workers and influence employers' behavior related to the broad goal of improving workplace compliance.[4] Research in this area has found that deterrence can effectively inform how enforcement agencies select and conduct investigations.[5]

The disclosure of compensation data summarized at the industry level enables contractors and subcontractors to assess their compensation structure along with those of others in the same industry, and provide useful data to current and potential employees. Some of these employers will not want to be identified as having pay standards that are significantly lower or different from those of their industry peers, since this may encourage valuable employees to consider moving to other employers, or discourage applicants who see that higher paying jobs may be available elsewhere. Employers do not want to be known as one of the lowest paying members of their industry, and may voluntarily change their pay structure.

OFCCP, through this NPRM, seeks to imbed deterrence into its existing three-prong enforcement framework which consists of: (1) Conducting compliance evaluations and complaint investigations, and obtaining remedies for victims of discrimination; (2) Issuing policy, technical assistance, and subregulatory guidance that is legally sound and effective; and (3) Strategically developing relationships and sharing information with contractors and workers about their respective rights and legal obligations.

In order to integrate deterrence into the first of the three prongs, that is, its compliance evaluations process, OFCCP will collect and analyze contractor summary compensation data to establish objective industry standards for identifying potential discrimination in employee compensation.[6] OFCCP will use these standards to determine which contractors it will prioritize and schedule for compliance evaluations. This prioritization will be based on the amount of difference or variance between a contractor's pay standards when compared to the appropriate industry standards. By requiring contractors and subcontractors to report the data, OFCCP believes that some of these employers will voluntarily change their employment policies and practices. When coupling this collection of data with its proposed use, that is, using it to establish and make public objective industry standards that can indicate whether a contractor or subcontractor is at higher risk for possible compensation violations, OFCCP believes that more contractors will voluntarily change their policies and practices.[7] These contractors will rightfully assume that OFCCP is strengthening its enforcement in the area of compensation discrimination; therefore, they will likely take voluntary measures to ensure that they are in compliance should they be scheduled for an OFCCP compliance evaluation.

Integration of deterrence into the second prong of OFCCP's enforcement policy comes through not only the proposals in this NPRM but also through OFCCP's ongoing commitment to providing the contractors' human resources (HR) and compliance officials with access to technical assistance materials and training that supports compliance with OFCCP's regulations. It has been OFCCP's experience that HR and compliance officials often drive compliance within an organization, as they are often the sponsor or champion for compliance within the company. As such, training them and supporting their compliance work is critically important to greater deterrence and voluntary compliance.

Finally, as to the third prong of OFCCP's enforcement framework, routinely sharing aggregate compensation data at the industry and/or labor market level with contractors should drive some additional portion of the contractor community to engage in voluntary self-assessments of their compensation practices and make needed corrections.[8] OFCCP plans to share summary industry standards information with the public annually, as soon as practicable. Moreover, OFCCP plans to provide training and technical assistance to contractors that explain the standards and how contractors could use them to conduct self-assessments of their compensation practices and differences.[9]

Consistent with this overall view of transparency, a 2010 study found that the Wage and Hour Division (WHD) of the U.S. Department of Labor could potentially increase its deterrence effects by being more transparent about its enforcement activities.[10] More specifically, the report concludes that greater transparency about investigation activities underway or the targeting of certain geographic areas by WHD, and information about closed investigations ''potentially increase deterrence effects not only among employer networks, but also through spreading the word to workers in a local area.'' [11] Consequently, OFCCP anticipates that by making publicly available the industry standards used to prioritize contractors for enforcement actions, and its overall emphasis on compensation

[2] David Weil, *Improving Workplace Conditions Through Strategic Enforcement,* May 2010, at 2, *available at http://www.dol.gov/whd/resources/strategicEnforcement.pdf* (last accessed July 4, 2014).

[3] *Id.*

[4] *Id.* at 13.

[5] *Id.*

[6] A contractor's compensation practices, standing, or position relative to the ''objective industry standards'' do not constitute a violation of OFCCP's laws or regulations, and no violation, sanction or penalty is imposed based on a contractor's ability to meet or exceed the standard. This standard is a tool OFCCP may use to inform and refine its scheduling process for compliance evaluations.

[7] Mark A. Cohen, *Empirical Research on the Deterrent Effect of Environmental Monitoring and Enforcement,* 30 ELR 10245, 10247–10250 (2000) (finding that empirical studies demonstrate the effectiveness of government activities such as enforcement and compliance monitoring have a deterrent effect; a general deterrent effect exists when the regulated believe that they have a higher probability of being monitored; monitoring the behavior of regulated entities based on assessed noncompliance risk level has a deterrent effect); Executive Office of the President, Office of Drug Control Policy, *Measuring the Deterrent Effect of Enforcement Operations on Drug Smuggling, 1991–1999,* (August 2001), *available at https://www.ncjrs.gov/ondcppubs/publications/pdf/measure_deter_effct.pdf* (last accessed June 23, 2014) (a deterrent effect exists with increased penalties and targeted enforcement operations); Diane Del Guercio, Elizabeth R. Odders-White & Mark J. Ready, *The Deterrence Effect of SEC Enforcement Intensity on Illegal Insider Trading,* (Sept. 2013) (providing direct evidence that aggressive enforcement deters illegal activity).

[8] Mark A. Cohen, *Empirical Research on the Deterrent Effect of Environmental Monitoring and Enforcement,* 30 ELR 10245, 10250 (2000) (sharing information is an important enforcement tool because it can change firm behavior; information disclosure has an important deterrent effect).

[9] These voluntary assessments should not be confused with and do not take the place of the assessments required of contractors' affirmative action programs under OFCCP's regulations.

[10] David Weil, *Improving Workplace Conditions Through Strategic Enforcement,* May 2010, at 83, *available at http://www.dol.gov/whd/resources/strategicEnforcement.pdf* (last accessed July 4, 2014) (among the study recommendations were making investigation activities in a geographic area more transparent, and increasing public access to data on closed case investigations or industry initiatives to create a deterrent effect).

[11] *Id.*

discrimination enforcement, the agency will also see positive deterrence effects.

Yet another possible deterrence effect exists when OFCCP generally exercises its enforcement authority. When OFCCP finds and remedies violations during a scheduled compliance evaluation, because the contractor has not voluntarily changed its behavior, a preventive deterrent effect is the result. When OFCCP finds and remedies violations by contractors, they may be prohibited from, and thus prevented from, continuing their discriminatory practices. This enforcement approach is tantamount to ''preventive'' deterrence because the expectation is that at least some of these violators are prevented from continuing their unlawful conduct for some period.

Deterrence, unlike enforcement actions, is proactive in nature. As such, it can prevent jobs from being denied or lost, prevent workers from being unfairly compensated, and prevent individuals and their families from being placed in financial jeopardy due to employment discrimination. This NPRM is one means of enabling OFCCP to collect the data it needs to strategically prioritize compliance evaluations, and share that data, as appropriate, to support voluntary changes in contractor employment behaviors.[12] Collecting this readily available compensation information will permit OFCCP to identify and prioritize contractors and subcontractors that are likely to have possible compensation violations, and strategically deploy its enforcement resources to investigate those contractors. In an era of increased demand for productivity with dwindling resources, this enhanced data collection will inure to the benefit of both OFCCP and compliant Federal contractors and subcontractors.

*Legal Authority*

Originally issued in 1965, and amended several times in the intervening years, the purpose of Executive Order 11246 is twofold. First, the Executive Order prohibits employment discrimination on the basis of race, color, religion, sex, sexual orientation, and gender identity and national origin against employees and applicants by covered Federal contractors and subcontractors.[13] Second, it requires that each covered Federal contractor and subcontractor take affirmative action to ensure equal opportunity in employment. The nondiscrimination and affirmative action obligations of Federal contractors cover all aspects of employment, including rates of pay and other compensation.

The requirements in Executive Order 11246 generally apply to any business or organization that: (1) Holds a single Federal contract, subcontract, or Federally assisted construction contract in excess of $10,000; (2) has Federal contracts or subcontracts with a combined total exceeding $10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount. Pursuant to the Executive Order, the award of a Federal contract comes with a number of responsibilities. Section 202 of the Executive Order requires every contractor to agree to: (1) Comply with all provisions of the Executive Order and the rules, regulations, and relevant orders of the Secretary of Labor; (2) provide all information and reports required by the Executive Order and implementing rules, regulations, and orders; and (3) provide access to its books, records, and accounts to the Secretary of Labor for the purpose of investigation to ascertain compliance with such rules, regulations, and orders. Under Section 203 of the Executive Order, the Secretary of Labor has broad authority to require compliance reports from contractors that contain such information regarding their practices, employment policies, programs, and employment statistics, in such form as the Secretary of Labor may prescribe. Likewise, the implementing regulations at 41 CFR 60–1.12(a) provide that the Director of OFCCP may require a contractor to keep employment or other records, including records on compensation and other rates of pay by race and gender, and must supply this information to OFCCP upon request. A contractor in violation of the Executive Order may have its contracts canceled, suspended, terminated, or may be subject to debarment.

*Major Proposed Provisions in the NPRM*

The regulation at 41 CFR 60–1.7 sets forth the existing requirement that certain Federal contractors and subcontractors submit an annual Employer Information Report EEO–1 (EEO–1 Report), a standard Federal report on workforce demographics that is jointly promulgated by OFCCP and the Equal Employment Opportunity Commission (EEOC). The NPRM proposes the following major provisions:

- Amending the regulation at 41 CFR 60–1.7 by adding a requirement that employers who file EEO–1 Reports, have more than 100 employees, and a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications, submit two columns of additional information to the EEO–1 Report in a new Equal Pay Report to OFCCP.[14] The report requires the submission of summary data on employee compensation by sex, race, ethnicity, specified job categories, and other relevant data points such as hours worked, and the number of employees.
- Requiring that covered Federal contractors and subcontractors electronically submit the proposed Equal Pay Report using a web-based data tool. OFCCP will establish a process for requesting an exemption to the electronic filing requirement.
- Requiring contract bidders to make a representation related to whether they currently hold a Federal contract or subcontract that requires them to file the proposed Equal Pay Report and, if so, whether they filed the report for the most recent reporting period.
- Extending existing agency sanctions to Federal contractors and subcontractors for the failure to file timely, complete, and accurate Equal Pay Reports, and the representation of compliance.

OFCCP is also interested in amending the regulation to 41 CFR 60–1.7 by adding a requirement that employers who file the Department of Education's Integrated Postsecondary Education Data System (IPEDS) report, have more than 100 employees, and have a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications, also file OFCCP's proposed Equal Pay Report. OFCCP is particularly interested in comments related to the need to collect additional compensation data from postsecondary academic institutions in light of the scope of their existing reporting obligations with the U.S. Department of Education. Consequently, information relevant to the feasibility of

[12] Archon Fung, Mary Graham & David Weil, *Full Disclosure: The Perils and Promise of Transparency,* Cambridge University Press (2007).

[13] On July 21, 2014, the President signed Executive Order 13672 amending Executive Order 11246 to include nondiscrimination based on sexual orientation and gender identity. This Order requires that a regulation be prepared within 90 days of the date of the Order. Though the new Executive Order is effective immediately, the protections apply to contracts entered into on or after the effective date of the new DOL regulation.

[14] Any reference to contractor obligations under the proposed rule described in this NPRM also apply to first tier nonconstruction subcontractors and construction subcontractors that satisfy the employee and contract size coverage criteria in the proposed rule.

using IPEDS data to satisfy the objectives of this NPRM is particularly helpful on the issue of the scope of coverage.

OFCCP proposes sharing summary industry standards information with the public annually, as soon as practicable. Moreover, OFCCP plans to provide training and technical assistance to contractors that explain the standards and how contractors could use them to conduct their self-assessments. This information could reflect the industry and/or labor market, or some other relevant aggregate grouping of the data received by OFCCP.[15] The published data will be made available to support and encourage genuine, in-depth, contractor self-assessments of their compensation policies and practices. OFCCP believes that the publication of data for contractors to use would significantly promote deterrence and voluntary compliance with their obligations under Executive Order 11246. The advancement of the societal goals of nondiscrimination in the workplace, and closing the pay gap, are the by-products of deterrence and compliance. Therefore, OFCCP is interested in comments on the cost to contractors of conducting these self-assessments of the data provided pursuant to the Equal Pay Report against published industry standards. These voluntary compensation difference assessments are not substitutions for mandatory assessments required by other provisions in Part 60.

*Costs, Benefits and Transfers*

The table below displays the estimated costs associated with the implementation of this NPRM. OFCCP estimates that the proposed cost of the NPRM is $684 per contractor establishment or $2,176 per contractor company.

TABLE 1—COST OF THE PROPOSED RULE

| Frequency | Description | Estimated cost |
|---|---|---|
| One-Time Burden | Regulatory familiarization, modifications to contractor personnel tracking systems, and changes to the contractor's bidder representation process. | $33,591,233 |
| Annual Recurring Burden | Contractors completing the proposed report and contractors requesting exemption from electronic filing. | 12,654,414 |
| Annual Operations and Maintenance Costs. | The cost of filing the exemption request | 4,542 |
| Cost to the Government | The cost of additional staffing and updating information systems | 3,759,696 |
| Total Cost of the Proposed Rule | | 50,009,885 |

Note that the first-year cost of the proposed rule is $46,250,189, which includes the one-time burden, annual recurring, and annual operations and maintenance costs.The goals of the proposed rule are:

- Increasing contractor self-assessment of compensation policies and practices, and expanding voluntary compliance with OFCCP's regulations, to advance OFCCP's mission of ensuring nondiscrimination in employment and decreasing the pay gap between males and females and between people on the basis of race.
- Providing probative compliance information, including data on industry and/or labor market standards, to promote industry-wide deterrence within the Federal contractor community and lead to modified compliance behavior in the compensation arena.
- Making data-driven enforcement decisions that support the efficient use of limited enforcement resources. OFCCP will strategically deploy its resources to focus on conducting compliance evaluations of contractors that are more likely to have compensation discrimination violations.
- Shifting, to the maximum extent possible, compliance evaluation costs from contractors that are likely to be in compliance with OFCCP's existing regulations prohibiting pay discrimination to contractors that are more likely not to be in compliance.
- Contributing to the stability of working Americans by helping minimize the pay gap and promoting broad societal policy objectives of nondiscrimination and equal pay. Providing workers victimized by discrimination the opportunity to obtain the best possible remedies and relief. OFCCP anticipates increasing its capacity to identify more violations and obtain prompt remedies through a better-informed scheduling process for the estimated 4,000 compliance evaluations it conducts annually.

Social science research also suggests that anti-discrimination law has broad social benefits. Workers who are capable of successfully enforcing their rights and obtaining redress experience these benefits, as do the workforce and the country's economy as a whole. In general, discrimination is incompatible with an efficient labor market. Discrimination interferes with the ability of workers to find jobs that match their skills and abilities and to secure wages that are consistent with a well-functioning marketplace.[16] Discrimination also harms employers, by artificially restricting the pool of available talent, by diluting the critical reward structure that relates compensation to actual job performance, and by adding unnecessary costs. For example, employers may prefer to select certain categories of workers based on bias and end up with less qualified or able employees.[17] Discriminatory decisions are thought to be the result of functioning with limited information. This lack of information may drive employers to use group-based characteristics as shortcuts in making decisions, or as statistical proxies for other qualifications. Both can lead to inefficient outcomes.[18] Favoritism or limited information can result in pay disparities when it causes employers to reward certain categories of employees based on bias rather than merit. Discrimination may reflect market

[15] The data could be made available at industry, labor market or other grouping levels based on OFCCP's assessment of the actual data it receives, and whether or not external data sources are used.

[16] Shelley J. Lundberg & Richard Starz, *Private Discrimination and Social Intervention in Competitive Labor Markets,* 73 Am. Econ. Rev. 340 (1983); Dennis J. Aigner & Glen G. Cain, *Statistical Theories of Discrimination in Labor Markets,* 30 Indus. and Labor Relations Rev. 175 (1977).

[17] Gary Becker, ''The Economics of Discrimination'' (1957).

[18] Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Brendan More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination,* 94 Am. Econ. Rev. 991 (2004); Ian Ayres & Peter Siegelman, *Race and Gender Discrimination in Bargaining for a New Car,* 85(3) Am. Econ. Rev. (1995); Stewart Schwab, *Statistical Discrimination,* 76 Am. Econ. Rev. 228 (1986).

failure, where collusion or other anti-discriminatory practices allow majority group members to shift the costs of discrimination to minority group members.[19]

Consequently, effective anti-discrimination enforcement can promote economic efficiency and growth. For example, a number of scholars have documented the benefits of the civil rights movement and the adoption of Title VII of the Civil Rights Act of 1964 on the economic prospects of workers and the larger economy.[20] One recent study estimated that improved workforce participation by women and minorities, including through adoption of civil rights laws and changing social norms, accounts for 15–20 percent of aggregate wage growth between 1960 and 2008.[21]

**Background**

The OFCCP is a civil rights and worker protection agency that enforces one Executive Order and two laws that prohibit employment discrimination and require affirmative action by companies doing business with the Federal Government.[22] Specifically, Federal contractors must engage in affirmative action and provide equal employment opportunity without regard to race, color, religion, sex, national origin, disability, or status as a protected veteran. The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended, prohibits employment discrimination against certain protected veterans. Section 503 of the Rehabilitation Act of 1973 (section 503), as amended, prohibits employment discrimination against individuals with disabilities. Executive Order 11246, as amended, prohibits employment discrimination on the basis of race, religion, color, national origin, sex, sexual orientation, and gender identity.[23] Compensation discrimination is one form of discrimination prohibited by the Executive Order.

Although laws protecting workers from pay discrimination have been in effect for more than 50 years, pay discrimination still exists. Pay discrimination is a real problem that continues to plague American working families. For example, looking at annual earnings reveals large gaps, where women working full-time earn approximately 77 cents on the dollar compared with men.[24] According to the latest BLS data, the weekly median earnings of women are about 82 percent of that for men.[25] While research has found that many factors contribute to the wage gap, such as occupational preferences, pay discrimination remains a significant problem for the working poor and the middle class.

Research also reveals a wage gap amongst various racial groups. At the end of 2013, median weekly earnings for African-American men working at full-time jobs were $646 per week, only 72.1 percent of the median for white men ($896).[26] Further, a study based on the hiring pattern of workers in the state of New Jersey found that African Americans, when re-entering the job market after periods of unemployment, are offered lower wages when compared to their white counterparts.[27] The study showed that the pay gap between these groups is typically 30 percent.[28] Controlling for various factors such as skills and previous earnings, the study found that up to a third of this pay gap could be attributed to racial discrimination in the labor market.[29] Similarly, a study based on National Longitudinal Survey data, found that the pay gap between African Americans and whites continues to exist, even after controlling for abilities and schooling choices.[30]

For Hispanic men, the wage gap is approximately 67 cents when compared to non-Hispanic white men.[31] Many of the studies analyzing pay disparities for the Hispanic populations focus on differences in education and age as compared to white workers.[32] However, even after analyzing the effect of these factors, these studies showed that these factors do not entirely account for the pay gap for Hispanics.[33]

The wage gap is significantly greater for many women of color. BLS data reveals that African-American women make approximately 68 cents, Latinas make approximately 59 cents, and Asian-American women make approximately 87 cents for every dollar earned by a non-Hispanic white man.[34] Comparable figures, based on Census data, are 64 cents for African-American women, 56 cents for Latinas, and 86 cents for Asian-American women.[35]

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[19] Kenneth J. Arrow, *What Has Economics to Say about Racial Discrimination*? 12 The Journal of Economic J. Econ. Perspectives 91 (1998).

[20] J. Hoult Verkerke, ''*Free to Search,*'' 105 Harvard Law Review Harv. L. Rev. 2080 (1992); James J. Heckman & Brook S. Payner, ''*Determining the Impact of Federal Anti-Discrimination Policy on the Economic Status of Blacks: A Study of South Carolina,*'' 79 American Economic Review Am. Econ. Rev. 138 (1989).

[21] C. Hsieh et. al., *The Allocation of Talent and U.S. Economic Growth,* NBER Working Paper (2013).

[22] Executive Order 11246, Sept. 24, 1965, 30 FR 12319, 12935, 3 CFR, 1964–1965, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793, (section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA).

[23] On July 21, 2014, the President signed Executive Order 13672 amending Executive Order 11246 to include nondiscrimination based on sexual orientation and gender identity. This Order requires that a regulation be prepared within 90 days of the date of the Order. Though the new Executive Order is effective immediately, the protections apply to contracts entered into on or after the effective date of the new DOL regulation.

[24] U.S. Bureau of the Census, Income, Poverty and Health Insurance Coverage in the United States, Current Population Reports 2012 (Sept. 2013), *available at http://www.census.gov/prod/2013pubs/p60-245.pdf.*

[25] Bureau of Labor Statistics, U.S. Department of Labor, Current Population Survey, Labor Force Statistics from Current Population Survey, *available at http://www.bls.gov/cps/earnings.htm#demographics;* Updated quarterly CPS earnings figures by demographics by quarter for sex through the end of 2013 *available at http://www.bls.gov/news.release/wkyeng.t01.htm.* Based on Current Population Survey data, in 2012, among married women who worked full-time, median weekly earnings were $751. Among married men who worked full time, median weekly earnings were $981. Among married men and women in 2012, weekly earnings for fathers and mothers with children under age 6 were $935 and $765, respectively. Weekly earnings for married men with no children under age 18 were $973, compared with $748 for married women with no children under age 18. Bureau of Labor Statistics, U.S. Department of Labor, The Editor's Desk, Median weekly earnings by sex, marital status, and presence and age of own children under 18 in 2012, *available at http://www.bls.gov/opub/ted/2013/ted_20131203.htm* (last accessed March 28, 2014).

[26] Bureau of Labor Statistics, *Usual Weekly Earnings of Wage and Salary Workers,* Fourth Quarter 2013, *available at http://www.bls.gov/news.release/pdf/wkyeng.pdf,* January 22, 2014 (last accessed March 28, 2014).

[27] Roland G. Fryer Jr. et al., *Racial Disparities in Job Finding and Offered Wages* (2013), at 27, *available at, http://scholar.harvard.edu/files/fryer/files/racial_disparities_in_job_finding_and_offered_wages.pdf* (last accessed April 29, 2014).

[28] *Id.* at 29.

[29] *Id.*

[30] Sergio Urzua, *Racial Labor Market Gaps: The Role of Abilities and Schooling Choices,* 43.4 J. Hum. Resources, 919, 919–971.

[31] Additional calculations by race and sex based on 2012 Person Income Table PINC–10. Wage and Salary Workers—People 15 Years Old and Over, by Total Wage and Salary Income in 2012, Work Experience in 2012, Race, Hispanic Origin, and Sex, *available at https://www.census.gov/hhes/www/cpstables/032013/perinc/pinc10_000.htm* (comparison of median wage for workers working 50 or more weeks); Bureau of Labor Statistics 2012 CPS data, available at *http://www.bls.gov/cps/earnings.htm#demographics (last accessed on March 28, 2014).*

[32] Richard Fry & B. Lindsay Lowell, The *Wage Structure of Latino-Origin Groups across Generations,* 45 Indus. Relations 2 (2006); Abelardo Rodriguez & Stephen Devadoss, *Wage Gap between White Non-Latinos and Latinos by Nativity and Gender in the Pacific Northwest, U.S.A.,* 4 Journal of Management and Sustainability 1 (2014).

[33] *Id.*

[34] Current Population Survey, Earnings by Demographics 2012, *available at http://www.bls.gov/cps/earnings.htm#demographics* (last accessed March 28, 2014

[35] Additional calculations by race and sex based on 2012 Person Income Table PINC–10. Wage and Salary Workers—People 15 Years Old and Over, by Total Wage and Salary Income in 2012, Work Experience in 2012, Race, Hispanic Origin, and Sex, available at *https://www.census.gov/hhes/www/*

Women of color also earn less than men within their racial and ethnic groups.[36]

Regardless of how it is measured, over time, the significance of the differences in compensation for women and men becomes increasingly evident. According to one analysis by the Department of Labor, a typical 25-year-old woman working full-time would have already earned $5,000 less over the course of her working career than a typical 25-year old man.[37] If that earnings gap is not corrected, by age 65, she will have lost hundreds of thousands of dollars over her working years.[38] Decades of research shows this wage gap remains even after accounting for factors like the type of work people do, and qualifications such as education and experience.[39] Moreover, while some women may work fewer hours or take time out of the workforce because of family responsibilities, there is research suggesting that discrimination and not just choices can lead to women with children earning less.[40] At the current rate of progress, researchers estimate it will take until 2057 to close the gender pay gap.[41]

Although occupational segregation is an important contributing factor to the gender pay gap,[42] women earn less than men even within occupations. In a recent study of newly trained doctors, after considering the effects of specialty, practice setting, work hours and other factors, the gender pay gap was nearly $17,000 in 2008.[43] Catalyst, a nonprofit organization working for more gender-inclusive workplaces, reviewed 2011 government data showing a gender pay gap for women lawyers,[44] and that data confirms that the gap exists for a range of professional and technical occupations.[45] A study by the Institute for Women's Policy Research, based on information from BLS, found that women frequently earn less than men within the same occupation.[46] Despite differences in the types of jobs women and men typically perform, women earn less than men in occupations commonly filled by men such as managers, software developers, and CEOs. Women even earn less than men in those occupations commonly filled by women such as teachers, nurses, and receptionists. In a recent review of 2010 Census data, Bloomberg identified a particularly large pay gap in the financial sector.[47]

While occupational differences explain some of the gender wage gap, discrimination and other barriers play a role.[48] The significant underrepresentation of women in the highly compensated science, technology, engineering, and mathematics fields is one of many factors that can explain the overall average gender pay gap. However, a Department of Commerce study found that, after using statistical methods to account for workers' age, educational attainment, and region of residence, women who successfully enter these fields still earn less than their male counterparts.[49] Further, research has identified perceived hostility and fewer promotional opportunities for women as important reasons for female underrepresentation.[50] As the Council of Economic Advisors explained in a 2013 report issued by the White House Equal Pay Task Force: ''While occupational segregation is sometimes described as a simple matter of women's choices, historical patterns of exclusion and discrimination paint a more complex picture . . . occupational segregation may be due [in part] to discrimination that can take several forms, including outright refusal to hire, severe harassment of women in non-traditional jobs, or policies and practices that screen qualified women out of positions but are not job-related.'' [51]

Fewer dollars for workers and their families means a real loss of economic security, at a time when no family can afford to be earning less. Historically, data show that women are generally poorer than men. The poverty rates for unmarried female head of households with children are significantly higher than most poverty rates. Looking as far back as 1966, poverty rates for unmarried female head of households with children have been consistently two to three times higher than the

*cpstables/032013/perinc/pinc10_000.htm* (comparison of median wage for workers working 50 or more weeks); Bureau of Labor Statistics 2012 CPS data, available at *http://www.bls.gov/cps/earnings.htm#demographics* (last accessed on March 28, 2014).

[36] According to 2013 CPS usual weekly earnings data, African-American women earn 88 cents on the dollar compared with African-American men, Hispanic women earn 80 cents on the dollar compared with Hispanic men, AAPI women earn 75 cents on the dollar compared with AAPI men, and white women earn 74 cents on the dollar compared with white men. Calculated by the DOL Chief Economist Office from CPS ORG Annual Averages.

[37] Calculated by the Department of Labor based on CPS usual weekly earnings of wage and salary workers by sex. The cumulative lost earnings compare the difference in median earnings for full time workers who worked 52 weeks out of the year.

[38] White House Council on Women and Girls, *The Key to an Economy Built to Last* (April 2012), *available at http://www.whitehouse.gov/sites/default/files/email-files/womens_report_final_for_print.pdf.*

[39] A March 2011 White House report entitled Women in America: Indicators of Social and Economic Well-Being, found that while earnings for women and men typically increase with higher levels of education, male-female pay gap persists at all levels of education for full-time workers (35 or more hours per week), according to 2009 BLS wage data. Potentially nondiscriminatory factors can explain some of the gender wage differences. See, e.g., June Elliot O'Neill, The Gender Gap in Wages, Circa 2000, Am. Econ. Rev. (May 2003). Even so, after controlling for differences in skills and job characteristics, women still earn less than men. Explaining Trends in the Gender Wage Gap, A Report by the Council of Economic Advisers (June 1998). Ultimately, the research literature still finds an unexplained gap exists even after accounting for potential explanations, and finds that the narrowing of the pay gap for women has slowed since the 1980s. Joyce P. Jacobsen, *The Economics of Gender* 44 (2007); Francine D. Blau & Lawrence M. Kahn, *The U.S. gender pay gap in the 1990s: Slowing convergence,* 60 Industrial and Labor Relations Review 45 (2006).

[40] Shelley J. Correll, Stephen Benard, & In Paik, ''Getting a Job: Is There a Motherhood Penalty?,'' 112 *American Journal of Sociology* 1297 (2007).

[41] Institute for Women's Policy Research, *At Current Pace of Progress, Wage Gap for Women Expected to Close in 2057* (April 2013), *available at http://www.iwpr.org/publications/pubs/at-current-pace-of-progress-wage-gap-for-women-expected-to-close-in-2057.*

[42] White House Equal Pay Task Force, *Fifty Years After the Equal Pay Act* (June 2013), *available at http://www.whitehouse.gov/sites/default/files/equalpay/equal_pay_task_force_progress_report_june_2013_new.pdf.*

[43] Anthony T. LoSasso, et al, The *$16,819 Pay Gap For Newly Trained Physicians: The Unexplained Trend of Men Earning More Than Women,* 30 Health Affairs 193 (2011), *available at http://content.healthaffairs.org/content/30/2/193.abstract.*

[44] Catalyst Inc., Women in Law in the U.S. (March 2013), *available at http://www.catalyst.org/knowledge/women-law-us* (last accessed on April 24, 2014).

[45] Bureau of Labor Statistics, Median weekly earnings of full-time wage and salary workers by detailed occupation and sex (2013), *available at http://www.bls.gov/cps/cpsaat39.pdf.*

[46] Ariane Hegewisch, Claudia Williams, & Vanessa Harbin, *The Gender Wage Gap by Occupation* (2012), *available at http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-1/.*

[47] Bloomberg L.P., *Wall Street Jobs Show Largest Gender Gap in Pay* (2014), *available at http://www.bloomberg.com/video/88496286-wall-street-jobs-show-largest-gender-gap-in-pay.html* (last accessed on April 24, 2014).

[48] Francine D. Blau & Lawrence M. Kahn, *The U.S. gender pay gap in the 1990s: Slowing convergence,* 60 Industrial and Labor Relations Review 45 (2006) (estimate occupational differences may account for about half of the gender wage gap; the extent to which occupational differences reflect choice or potential discrimination is not addressed by this analysis).

[49] U.S. Department of Commerce, Economics and Statistics Administration. Women in STEM: A Gender Gap to Innovation (August 2011).

[50] Weinberger, Catherine J. An Economist's Perspective on Women in the IT Workforce. Encyclopedia of Gender and Information Technology (2006); Hunt, J., Why do Women Leave Science and Engineering? NBER Working Paper (2010).

[51] White House Equal Pay Task Force, *Fifty Years After the Equal Pay Act* (June 2013), *available at http://www.whitehouse.gov/sites/default/files/equalpay/equal_pay_task_force_progress_report_june_2013_new.pdf.*

overall male and female poverty rates.[52] In 2009, 28 percent of unmarried working women with children had incomes below the poverty threshold compared to 6 percent for male workers.[53] According to one report, average annual earnings for women between 2009 and 2011 could have increased from $36,129 to $42,380 (or by 17 percent) annually if the wage gap had been closed.[54] This increase, in turn, could have reduced the poverty rate for working women by almost 50 percent.[55] Examining mean annual earnings, mean family income, and poverty rates from 2009 through 2011, the data on poverty rates for working single mothers, working single women living alone, and working married women demonstrate that closing the pay gap for these groups could also reduce their poverty rates. After pay adjustments, working single mother poverty rates would have decreased by 13.7 percent, the rate for the working single women living alone group would have dropped by 6.4 percent, and working married women poverty rates would have decreased by 1.3 percent.[56] It is, therefore, very likely that eliminating or significantly reducing the wage gap will have an overall positive impact on the poverty rates and financial stability of these groups of women and their families.

As research suggests, because discrimination is one of the factors contributing to the pay gap, improving the ability of Federal civil rights enforcement agencies such as OFCCP to identify and remedy pay discrimination is a critical element of a broader strategy for closing that gap—particularly in light of its substantial social cost. To advance that goal, in 2010, President Obama convened the National Equal Pay Task Force (the Task Force), which includes the Department of Labor, Department of Justice, the EEOC and the Office of Personnel Management, to provide a coordinated Federal response to pay discrimination. In its ''Recommendations and Action Plan,'' the Task Force developed a number of recommendations to address the persistent challenges to enforcement of Federal laws prohibiting compensation discrimination.[57]

In addition to deterring unlawful behavior and incentivizing the adoption of compensation policies and procedures, better and more comprehensive compensation data can substantially improve enforcement of anti-pay discrimination laws. Indeed, a key Task Force recommendation is that the Federal Government collect data on the private workforce to better understand the scope of the pay gap, and focus enforcement resources on employers that are more likely to be out of compliance with Federal laws prohibiting wage discrimination. The Task Force noted that the ''lack of data makes identifying wage discrimination difficult and undercuts enforcement efforts.'' [58] The Task Force recommendations urge OFCCP to devise a strategy to collect compensation data from Federal contractors and subcontractors, where feasible, in a manner that minimizes the burden on employers.[59]

Identifying and remedying compensation discrimination has been integral to OFCCP's mission for many years. OFCCP primarily enforces contractors' compliance with Executive Order 11246, including its prohibition on compensation discrimination, by conducting compliance evaluations of Federal contractors and subcontractors each year. These compliance evaluations analyze workforce data, employment practices, and records that OFCCP requires contractors and subcontractors to keep and produce upon request. These recordkeeping requirements specifically include information on compensation such as wages, salaries, commissions, and bonuses.[60] As part of a compliance evaluation, OFCCP may request and review compensation data from specific contractor establishments, including, as appropriate, detailed compensation data on individual employees, and investigate contractor pay practices, even without a specific discrimination complaint.

In searching for pay discrimination violations, OFCCP is limited to the data provided by the nearly 4,000 contractors and subcontractors it evaluates annually. This cohort is a small fraction of the more than 116,000 establishments that are estimated to fall under OFCCP's jurisdiction.[61] In the absence of a comprehensive, accurate database that captures all Federal contractors and subcontractors, the agency must develop its own list of contractors and subcontractors for compliance evaluations, using a neutral selection process. OFCCP develops this list by using multiple sources of information such as Federal acquisition and procurement databases, EEO–1 reports, Dun & Bradstreet (D&B) data, and the U.S. Census Bureau tabulations. Statistical thresholds such as industry type and employee counts of Federal contractor establishments are also used. The list may be further refined by applying a number of neutral factors such as contract expiration date and contract value on the number of establishments per contractor that will be scheduled in any one cycle.

Despite the labor-intensive development of the scheduling list, OFCCP is currently unable to determine the true likelihood of compliance with OFCCP's regulations, including the prohibition against compensation discrimination found in Executive Order 11246. The Equal Pay Report data will allow OFCCP to assess a broad array of compensation-related employment practices, such as differences in promotion, initial placement or job assignment, and pay. The pay practices would not just include salary but incentives or other earnings opportunities. OFCCP can use the representation data in EEO–1 reports to identify potential hiring or

[52] U.S. Department of Commerce, Economic and Statistics Administration, and the Executive Office of the President, Office of Management and Budget, for the White House Council on Women and Girls, *Women in American: Indicators of Social and Economic Well-Being,* March 2011 *available at http://www.whitehouse.gov/administration/eop/cwg/data-on-women* (last accessed on March 28, 2014).

[53] *Id.* at 14.

[54] Heidi Hartman, Ph.D., Jeffrey Hayes, Ph.D., & Jennifer Clark, *How Equal Pay for Working Women Would Reduce Poverty and Grow the American Economy, Briefing Paper IWPR #C411,* Institute for Women's Policy Research, January 2014. The calculations are based on Current Population Survey Annual Social and Economic supplements, 2010–2012, for calendar years 2009–2011. The dollar valuations are in 2012 dollars.

[55] *Id.*

[56] *Id.*

[57] *See* National Equal Pay Enforcement Task Force Report, *available at http://www.whitehouse.gov/sites/default/files/rss_viewer/equal_pay_task_force.pdf* (last visited March 25, 2014).

[58] *Id.*

[59] *Id.*

[60] 41 CFR 60–1.12. In addition, OFCCP uses a Scheduling Letter and Itemized Listing to request records and information for the desk audit portion of its compliance evaluations. Authorization of a revised Scheduling Letter and Itemized Listing is pending with the Office of Budget and Management (OMB) as an information collection request under OMB Control Number 1250–0003.

[61] The estimate of 116,000 establishments is based on the number of ''Yes'' answers to Question 3 on the 2012 EEO–1 Report to whether they have at least 50 employees and a contract or subcontract in the amount of $50,000 or more. OFCCP's proposed new reporting requirement will only effect a subset of this 116,000 establishment population; Specifically, those with more than 100 employees and contractor or subcontracts in the amount of $50,000 or more. In other rulemakings, OFCCP is using an estimate of 500,000 establishments because those proposed rules apply to all covered establishments and not just those filing EEO–1 reports with more than 100 employees as proposed in this NPRM. This 500,000 estimate is used elsewhere is based on the General Services Administration's (GSA) System for Acquisition Management (SAM) database that includes grants as well as contracts that would not be covered by OFCCP because they do not meet the minimum contract value of $10,000 for OFCCP jurisdiction.

affirmative action violations, but cannot provide insight into potential compensation violations.

There are voluntary compliance and enforcement benefits associated with collecting more data. For example, contractors could benefit from the potential cost savings. OFCCP currently estimates that a significant proportion of the establishments it evaluates annually are compliant with the nondiscrimination requirements of Executive Order 11246. Thus, some contractors and subcontractors may incur less burden hours and costs in preparing for and undergoing evaluations. If a contractor's compensation differences are within an acceptable range, when compared to the industry standard, OFCCP would not likely prioritize it for a compliance evaluation. Developing a data-driven scheduling process for compliance evaluations is more efficient and will likely reduce compliance costs for some contractors.

The collection of the data will allow OFCCP to conduct analysis and establish objective industry standards that it will make available to contractors and others. Contractors are encouraged to use this information to conduct self-assessments by comparing their pay to the industry standards, identifying indicators of potential issues, examining their pay practices to determine if problems or potential violations actually exists, and taking voluntarily steps to make needed corrections. Moreover, OFCCP will offer training and other assistance on the use of the standards for self-assessments.

*Who Must File the Equal Pay Report*

Contractors that are required to file EEO–1 reports, have more than 100 employees, have a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications, would file the Equal Pay Report. This generally includes:

- Private employers that:
  - ○ Are prime contractors or first tier subcontractors, and have a contract, subcontract, or purchase order amounting to $50,000 or more; [62] or
  - ○ serve as a depository of Government funds in any amount, or
  - ○ is a financial institution that is an issuing and paying agent for U.S. Savings Bonds and Notes.
- Private employers that are not covered by the exemption under 41 CFR 60–1.5.

Single establishment employers file one EEO–1 Report for their single location. Multi-establishment employers with several locations file additional EEO–1 reports; one for the headquarters location, a report for each establishment with more than 50 employees, and a report for each establishment with fewer than 50 employees or an Establishment List providing the name and locations of each of these locations with fewer than 50 employees. However, EEO–1 filers with 100 or fewer employees are exempt from the OFCCP filing requirement. Multi-establishment employers must also file a Consolidated Report that consolidates all of the employment data submitted for their various establishments and their headquarters. OFCCP evaluates contractors by establishment. This NPRM would require that each establishment, including the headquarters location, file a single Equal Pay Report. Unlike in EEO–1 reporting, no headquarters Consolidated Report is required.

OFCCP is considering requiring institutions of higher education to file the Equal Pay Report if they are required to file IPEDS reports with the Department of Education, have a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications, and have more than 100 employees.[63] The IPEDS reports collect data on faculty and staff by race and ethnicity using eight designations and by gender.[64] However, the IPEDS system collects limited data on compensation by demographics. IPEDS requires reporting of base pay for faculty positions, excluding medical school faculty, only by sex.[65] Requiring institutions of higher education to file the Equal Pay Report would expand compensation data collection to staff and all faculty positions, significantly increasing the number of workers covered by the report. In addition, using the Equal Pay Report framework would allow cross tabulation by race, and would go beyond reporting base pay. Key considerations for applying the data collection requirement to institutions of higher education include whether to use the IPEDS occupational categories, which differ from the EEO–1 job categories, and how to account for work hours.[66]

OFCCP's proposed report harmonizes in many ways with the format of the EEO–1 Report. It also proposes to rely on existing IRS compensation reporting by using W–2 earnings as the source of compensation data. OFCCP believes that the Federal contractors and subcontractors that are required to submit the IPEDS reports are still highly likely to have the W–2 earnings information, business processes and information technology (IT) systems in place that could store and generate the specific information OFCCP is proposing to obtain through the Equal Pay Report. Accordingly, OFCCP is interested in comments on the following issues concerning a potential reporting requirement for postsecondary academic institutions:

- The proposal in the NPRM and any alternatives, including the feasibility of using a single Equal Pay Report format for all covered Federal contractors and how that could be implemented should postsecondary academic institutions (i.e., IPEDS filers meeting the proposed Equal Pay Report thresholds) be covered by the Equal Pay Report requirements,
- the cost and benefits, both qualitative and quantitative, of covering postsecondary academic institutions but deferring their reporting obligation for some period of time, and the estimated cost to these institutions for reporting their data using EEO–1 job categories, and
- the estimated number of IPEDS filers that could be covered by the proposed Equal Pay Report.[67]

*What, When and How To File the Equal Pay Report*

Using the Equal Pay Report, OFCCP proposes to collect three pieces of information related to calculating aggregate W–2 earnings for each group of workers within the EEO–1 job categories:

- The total number of workers within a specific EEO–1 job category by race, ethnicity and sex;

[62] A construction subcontractor at any tier must file the EEO–1 Report annually if it has a contract or subcontract of $50,000 or more.

[63] National Center for Education Statistics, U.S. Department of Education, Institute of Education Sciences, *https://surveys.nces.ed.gov/ipeds/* (last accessed June 19, 2014).

[64] The designations for race and ethnicity are Hispanic/Latino, American Indian or Alaska Native, Asian, Black or African American, White, Two or More Races. Race/ethnicity and gender data are collected on students and completers of covered institutions; OFCCP is not seeking student and completers data.

[65] National Center for Education Statistics, U.S. Department of Education, Institute of Education Sciences, *https://surveys.nces.ed.gov/IPEDS/VisInstructions.aspx?survey=1&id=30043&show=all#chunk_1612* (last accessed July 24, 2014).

[66] IPEDS uses categories aligned with the 2010 Standard Occupation Codes, *https://surveys.nces.ed.gov/IPEDS/VisInstructions.aspx?survey=1&id=30043&show=all#chunk_1596* (last accessed July 24, 2014), and limits reporting on salary to full time workers, based on contract length (9, 10, 11 or 12 months), *https://surveys.nces.ed.gov/IPEDS/VisInstructions.aspx?survey=1&id=30043&show=all#chunk_1612* (last accessed July 24, 2014).

[67] The OFCCP notes that it has not found a reliable source for the number of IPEDS filers that meet the more than 100 employee threshold covered by the Equal Pay Report.

• total W–2 earnings defined as the total individual W–2 earnings for all workers in the job category by race, ethnicity, and sex; and

• total hours worked defined as the total number of hours worked for all workers in the job category by race, ethnicity and sex.

This Equal Pay Report itself would annually require the submission of summary employee compensation data, by sex, race, ethnicity, and specified job categories from Federal contractors, as well as other relevant data points that would include hours worked and number of employees. In an effort to harmonize the Equal Pay Report with the existing EEO–1 reporting requirement, the Equal Pay Report includes the same workforce demographic data (e.g., the identical seven race and ethnicity categories, sex, and company identification information),[68] the same ten EEO–1 job categories,[69] the same exemptions, and the same definition of ''employee.''[70] As with the EEO–1 Report, both full-time and part-time employees would be included in the Equal Pay Report, and Federal contractors and subcontractors would have to represent that they are in compliance with their reporting obligation.[71] Electronic submission of the report is being required, and OFCCP is proposing to create a hardship exemption for contractors unable to perform electronic submission. Similar provisions exist for EEO–1 reporting.

There are, however, some differences between the EEO–1 and the proposed Equal Pay Report. The EEO–1 uses a ''snapshot'' approach that requires employers to include in their report only those employees from one pay period between the months of July and September of the current survey year. The proposed Equal Pay Report, however, covers a full calendar year from January 1 through December 31. The Equal Pay Report includes summary compensation data using total W–2 earnings paid as of the end of each calendar year for each worker who was included in the contractor's EEO–1 report for that year. The use of summary W–2 earnings data for the calendar year aligns with the period covered under a contractor's W–2 filings. Workers no longer employed as of December 31 would still be included in the report. The EEO–1 Report does not collect summary or individual employee compensation data. While OFCCP proposes a report filing window of January 1 to March 31 of the following year in order to obtain W–2 compensation data for the full year, the EEO–1 Report requires filing and certification by September 30.[72] OFCCP seeks public comment on this proposal, including:

• The January 1 through December 31 reporting period, the March 31 filing deadline, and any additional cost resulting from these dates not aligning with the EEO–1 reporting dates, and

• the amount of additional cost contractors could incur from the proposed requirement for contractors to include on their Equal Pay Report the employees reported on their EEO–1 Report.

Collecting summary data from contractors as described here should contribute to minimizing the burden and cost of reporting incurred by Federal contractors and subcontractors. OFCCP is also seeking to reduce the burden associated with retrieving that data by using the same definition of compensation that is used to report W–2 earnings to the Internal Revenue Service (IRS). Thus, the expectation is that Federal contractors will not incur burden and cost related to collecting and producing new or different compensation data.

Contractors would be required to keep their Equal Pay Reports for a period of not less than two years from the date of the making of the report. However, if the contractor has fewer than 150 employees or does not have a contract of at least $150,000, this retention period is one year.

They would also have to make a representation related to whether they are currently a Federal contractor or subcontractor, and whether that they filed the report with OFCCP from the most recent reporting period when bidding on a Federal contract or subcontract. OFCCP proposes to apply sanctions in 60–1.4(a) and (b) and 60–1.27 to a failure to file a timely, complete and accurate Equal Pay Report and make the appropriate representations.

*Confidentiality of the Equal Pay Report Data*

The Freedom of Information Act, to the maximum extent that the information is exempt, would protect the information reported by contractors, including the summary compensation data. It is the practice of OFCCP not to release contractor data where (1) The contractor is still in business, and (2) the contractor indicates, and through the Department of Labor's review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm. In the NPRM, OFCCP proposes creating the authority to publish aggregate information based on compensation data collected from the Equal Pay Report, such as ranges or averages by industry, labor market, or other groupings, but only in such a way as not to reveal any particular establishment's or individual employee's data. OFCCP proposes that it would analyze the information collected on the Equal Pay Reports and, along with other available data, develop objective industry-based standards for compensation differences, and prioritize contractors and subcontractors for evaluation whose summary data show discrepancies that indicate possible compensation violations.

*Additional Information*

Bidders on Federal contracts and subcontracts will be required to state whether they currently have a Federal

[68] The seven race and ethnicity designations in the EEO–1 Report are Hispanic/Latino, White (non-Hispanic), Black or African American, Native Hawaiian or Other Pacific Islander, Asian, American Indian or Alaska Native, and Two or More Races. *See* Equal Employment Opportunity, Employer Information Report EEO–1, Section D: Employment Data.

[69] *Id.* The ten job categories are: Executive/Senior Level Officials and Managers, First/Mid-Level Officials and Managers, Professionals, Technicians, Sales Workers, Administrative Support Workers, Craft Workers, Operatives, Laborers and Helpers, and Service Workers.

[70] The term ''employee'' on the EEO–1 report is defined as ''any individual on the payroll of an employer who is an employee for purposes of the employers withholding of Social Security taxes except insurance sales agents who are considered to be employees for such purposes solely because of the provisions of 26 U.S.C. 3121(d)(3)(B) (the Internal Revenue Service Code). Leased employees are included in this definition. Leased Employee means a permanent employee provided by an employment agency for a fee to an outside company for which the employment agency handles all personnel tasks including payroll, staffing, benefit payments and compliance reporting. The employment agency shall, therefore, include leased employees in its EEO–1 report. The term employee SHALL NOT include persons who are hired on a casual basis for a specified time, or for the duration of a specified job (for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employees work at the site); persons temporarily employed in any industry other than construction, such as temporary office workers, mariners, stevedores, lumber yard workers, etc., who are hired through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement, or persons (EXCEPT leased employees) on the payroll of an employment agency who are referred by such agency for work to be performed on the premises of another employer under that employers direction and control. Equal Employment Opportunity Commission, Equal Employment Opportunity, Standard Form 100, Employer Information Report EEO–1, Instruction Booklet.

[71] *Id.*

[72] The proposed reporting period and report filing window discussed here for the Equal Pay Report are not specified in the text of the proposed regulation. Instead, these details will be in the ICR authorizing the collection and reporting of data using the report.

contract or subcontract that requires them to create affirmative action programs, and file EEO–1 and Equal Pay Reports. If so, the contractor or subcontractor must state whether it has prepared the affirmative action programs; filed the EEO–1 Report(s) for the most recent reporting period with the Joint Reporting Committee; and whether it filed an Equal Pay Report for the most recent reporting period with OFCCP.

The NPRM also proposes making technical amendments to § 60–1.7, as explained in the Section-by-Section Analysis. Those amendments would conform other related recordkeeping provisions in § 60–1.7 to the proposed new reporting requirement, as well as update them to reflect current agency practice.

In addition, to ensure that the costs and burdens of this rule are minimized to the extent feasible, OFCCP requests public comment on an alternative reporting framework. This alternative would utilize a single report that would fulfill contractors' reporting obligations under this rule and the EEO–1. This single report would collect all the information currently included on the EEO–1, as well as summary compensation information and other appropriate data elements for the purposes of meeting the objectives of this rule. OFCCP would coordinate with EEOC on how the single report could be collected, which agency would collect the single report, and the timing of the collection. OFCCP invites public comment on:

- The feasibility of this alternative framework,
- the possible content and design of the single report, and how the report could meet the needs of both OFCCP and EEOC,
- the degree to which using a single report could both minimize burden and effectively meet the objectives of this rule, and
- the possible administrative, procurement and other modifications needed to implement a single report alternative.

*Calculation of Objective and Reliable Standards for Assessing Contractor Pay Gaps*

OFCCP proposes using the data it collects in the Equal Pay Report, in conjunction with other information available through existing resources such as labor market survey data, to generate reliable and objective industry standards for assessing individual contractor compensation data and conducting contractor self-assessments. After receiving the Equal Pay Reports from covered contractors, OFCCP proposes to aggregate each contractor's summary data with those of peer employers by industry to construct the objective industry standards. Labor market data would also be used to create the objective industry standard. As proposed, these standards would include the total number of employees in each EEO–1 occupational category from all the Equal Pay Reports submitted by contractors in a particular industry group, as well as the industry group's total W–2 pay and total hours worked, and the mean hourly wage calculated as total W–2 pay divided by total hours worked. This information would be determined separately by race and gender. OFCCP proposes to compare each contractor's summary statistics to the relevant objective industry standard. OFCCP is more likely to prioritize contractors for compliance evaluations with pay gaps that are greater than the standard.

Because OFCCP anticipates that Equal Pay Report data may have fewer observations in certain industries or job categories, and because it is self-reported data on contractors only, considering information available in these other data sources may inform and improve the analysis of reported contractor compensation data by providing a larger economic context. OFCCP is interested in related comments such as:

- The use objective industry standards and using contractor pay gaps that are greater than the standards to focus or prioritize contractors for compliance evaluations,
- the feasibility of using external data along with the Equal Pay Report data to develop the objective industry standards,[73]
- the potential benefits and limitations of using supplementary external data sets for this purpose, and
- the existence of other potentially useful supplemental data sources, in addition to ACS and BLS data.

Using just Equal Pay Report data alone has the benefit of focusing specifically on the pay gap among Federal contractors, which may or may not be different from employers generally. It is simpler to use Equal Pay Report data alone and the calculations would be easier to understand. However, contractors operate in a larger labor market and industry environment, and using supplemental data sources allows consideration of these broader trends. The potential benefits of using supplemental general labor market data is that they are typically based on well-understood samples from large populations of firms and are developed in a general survey context. This makes the data less prone to non-response bias that may occur when collecting pay data to enforce an anti-discrimination legal mandate. In addition, by using this data, OFCCP can likely determine the extent to which the pay practices of Federal contractors demonstrate important differences when compared to the pay practices of all employers generally. OFCCP cannot glean this information when only looking at Equal Pay Report data.

Incorporating supplemental data sources supports OFCCP's ability to refine its contractor pay gap standards to use for comparison purposes.[74] For example, the agency could develop better standards for specific industries using North American Industry Classification System (NAICS) codes and the Equal Pay Report's job, sex, race and ethnicity categories.[75] Where feasible and appropriate, OFCCP could also refine the standards by geographic locations such as state, Metropolitan Statistical Area (MSA),[76] and by contractor size.[77] OFCCP would use these standards to prioritize contractors for scheduling compliance evaluations; these standards would also be made publicly available to support contractor voluntary compliance.

OFCCP anticipates that the Equal Pay Reports for some contractors will contain sparse cells because certain combinations of job category and demographics will have only a few workers. Certain EEO–1 job category

[73] The actual Equal Pay Report and instructions will be published in an Information Collection Request (ICR). OFCCP encourages comments on the proposed report.

[74] The regulations enforcing VEVRAA also use a related but distinct concept of developing a benchmark linked to external labor market data, a different approach to measurement and calculation than the one discussed here.

[75] In some cases, sample size considerations and data limitations may require aggregating race categories for calculating metrics or for making selections. Where possible, the agency proposes to maintain separate measures for each race/ethnicity grouping in the Equal Pay Report.

[76] Because the pay gap is a ratio, and because some industries are also correlated to specific geographic areas, it may be less necessary to have location-specific metrics. Sample size considerations, as explained below, may also affect the ability to calculate metrics at all possible levels of analysis. However, to the extent local labor market characteristics, such as the race/ethnicity distributions in different parts of the country, may affect the pay gap, it may be important to assess the role of geographic location when constructing measures and/or making selections or conducting voluntary compliance.

[77] OFCCP would review the data submitted by contractors to determine whether there are enough actual differences in the reported pay gap by contactor size, after accounting for industry and job category, to justify separate measures.

groupings summarized by race or ethnicity and gender may be much smaller than others, especially when further subdivided by industry or other variables. Small cell sizes may arise on the current EEO–1 Report, or the proposed Equal Pay Report for a variety of reasons: Sales workers or craft workers may be less prevalent in certain industries, some geographic regions may have fewer members of specific racial or ethnic groups than others, and smaller contractors will generally report summary data on behalf of fewer workers in each group. This is an unavoidable reality when studying aggregate wage data of the kind OFCCP intends to collect.

OFCCP plans to address these potential issues when calculating measures. For example, OFCCP may calculate and report national metrics for some industries, or metrics by region instead of MSA or state. In addition to aggregating where appropriate and necessary, OFCCP would likely exclude extremely sparse cells from the metric calculation altogether due to reliability and validity concerns. As a result, for certain job categories in certain industry groups, the agency may not report a metric where the data are insufficient.

*Use of the Equal Pay Report Data and the Metrics To Select Contractors for Evaluation*

For purposes of selecting contractors for compliance evaluations using the Equal Pay Report data, OFCCP proposes to focus primarily on a strategy that ranks contractors against the objective standards, and then prioritizes compliance evaluations of those contractors and subcontractors who have larger race or gender pay gaps than what is typically reported in the industry as measured by the objective industry standard described in the section above. Those contractors and subcontractors who report patterns with the greatest deviation from the applicable standard would have the highest likelihood of selection for further investigation under this approach. Under its usual compliance evaluation procedures, the agency would then examine their detailed compensation data and practices to make a determination about the contractors' actual compliance. OFCCP specifically proposes comparing average pay differences across contractors who are in the same industry within EEO–1 job categories. While EEO–1 categories are far too broad to identify pay discrimination at the individual employer level with precision, they are practical and useful for setting enforcement priorities by comparing across employers based on summary data. As explained further in this section, the agency also plans to consider how other data sources may provide information on firm or employee characteristics that would help refine and improve OFCCP's ability to use Equal Pay Report data to rank contractors and prioritize compliance evaluations.

Under the approach proposed by OFCCP, using an objective industry standard, the goal is not simply to identify absolute differences in pay, which may be explained in any particular case by a variety of legitimate factors. Rather, it is to identify contractors with pay differences that substantially depart from the objective industry standard, reducing the likelihood that legitimate factors explain all of the difference. The most straightforward approach to analyzing earnings data would be to simply compare the earnings of, for example, female and male professional employees within a reporting establishment and select those with the largest differences in average compensation for compliance evaluations. Thus, an establishment where female professionals earn on average 75 percent of what male professionals earn may be reviewed, and those where women earned 90 percent of what men earned may not. This procedure might be labeled a ''simple ratio'' analysis. In contrast, setting an industry standard using the kind of metrics described above compares the wage ratios for men and women in each establishment to the typical ratio within an industry group or other peer establishments. Under this approach, an establishment where the average female professional earns 75 percent as much as her male co-worker might not be selected for an OFCCP compliance evaluation if the ratios for women in similar firms average 60 percent. These basic principles also would apply when analyzing race or ethnicity-based differences.

By using an objective industry standard as the measure against which a contractor's pay gap is assessed, OFCCP should be able to account for some of the potential effects of employee qualifications and other potentially nondiscriminatory explanations for observed wage gaps. For example, if female professionals as a group are favoring particular types of jobs, or coming to particular jobs with more education or less full-time work experience on average than similar men, those differences should be reasonably similar among peer employers within the same industry and/or labor market. They might result in an overall average gender-based pay difference within the EEO–1 category of ''professionals'' for all employers in that peer group.

Although EEO–1 categories involve a mix of jobs and workers, the average differences in pay by race and sex across employers are still valuable because the Equal Pay Report will generate similar and comparable data by peer employers. With rare exceptions, OFCCP anticipates that systematic gender- or race-based differences will merit further investigation. Using a contractor's Equal Pay Report data against the objective industry standard further focuses these differences to contractors most worthy of further investigation and will inform the development of OFCCP's scheduling list.

For the group of contractors scheduled for a compliance evaluation, OFCCP would then conduct a desk audit of the contractor's data and records, and may make a request for more detailed data to evaluate the precise mix of jobs, workers and pay practices and draw an accurate conclusion about potential violations. That a contractor departs from the metric or has an absolute pay gap of a particular size is not sufficient evidence to find a pay discrimination violation. Equal Pay Report data would only be a basis to select contractors for a deeper assessment of potential discrimination in their compensation systems and practices based on the pay disparities observed in their reported data.

The agency also considered collecting information that would allow for calculation of variance. Variance is useful because it takes into account cell size (i.e., how many individuals are used in the calculation of the mean for a group) as well as the spread or differences in salary data among the persons in the group. However, providing enough information to calculate a variance would go beyond the total number of employees and total W–2 earnings and hours worked by group, and would increase the burden by requiring contractors and subcontractors to calculate and report additional metrics from their individual level data. The public is welcome to comment on these issues and approaches.

OFCCP plans to share information on industry standards publicly annually, as soon as practicable. OFCCP would post the standards on the agency's Web site. Training courses and technical assistance materials will be available in the form of technical assistance guides, web-based training courses, frequently asked questions (FAQs), directives and other policy statements, and through OFCCP's Customer Service Unit

responding to telephone and email questions and general inquiries. These courses and materials would explain the industry standards and how contractors could use them for self-assessment purposes. By providing access to this policy and technical assistance information, OFCCP is educating contractors and, thereby, likely deterring future violations. These tools should allow contractors to determine if a ''deeper dive'' is needed into their pay practices, and if problems are identified, to voluntarily correct them.

OFCCP seeks comment on this approach, including comments on:

- How contractors would use the objective industry standards that are based on aggregate compensation data to assess their compensation practices and/or disparities; and
- data challenges contractors could face.

In using Equal Pay Report data as part of its process for selecting contractors for review, OFCCP must address a number of important practical and operational considerations such as resource constraints, data limitations, and enforcing contractor compliance with a broad range of employment practices and affirmative action requirements related to sex, race, ethnicity, disability, and status as a protected veteran. In requesting comment on the potential application and use of Equal Pay Report data to its overall scheduling practice, the agency retains the discretion to consider these comments in light of the agency's operational and enforcement priorities.

Consistent with the Fourth Amendment standard of neutrality, OFCCP will continue to apply a variety of criteria to its decisions to select contractors for review that go beyond the scope of the Equal Pay Report data.

*Pre-Rulemaking Process—ANPRM*

Prior to developing this proposed rule, OFCCP solicited significant stakeholder input on the design and operation of a potential compensation data collection tool in an Advance Notice of Proposed Rulemaking (ANPRM) published on August 10, 2011 (76 FR 49398). The ANPRM stated OFCCP was considering requesting contractor compensation data, and asked for responses to fifteen specific questions about categories of data or potential applications of a data collection tool. The ANPRM also invited general comments on the design or approach of such a tool.

OFCCP received a substantial response to the ANPRM. Over 7,800 organizations and individuals submitted comments, highlighting the significance of the issue and the strong public interest in a potential compensation report. More than 7,000 comments were form letters organized by women's rights groups advocating generally for a broad data collection tool, and several hundred more were statements of general support for taking greater steps to address equal pay issues. In addition, a broad range of stakeholders submitted substantive comments on both OFCCP's overall concept of collecting contractor compensation data and on the specific issues raised in the ANPRM.

The comments submitted in response to the ANPRM raised significant issues. These include a set of overarching issues regarding the scope and purpose of data collection, the potential benefits to workers and contractors, potential burden and cost, and legal questions about OFCCP's authority to collect and use compensation data. In addition, the comments discussed specific points regarding who should provide data, what types of compensation data OFCCP should collect, what workers should be included and how to group them, what kinds of factors might be collected, and analytic techniques. Comments also addressed specific implementation issues, such as the agency's experience using the Equal Opportunity (EO) Survey, coordination with the EEOC and its research into compensation data collection, OFCCP's technical capacity to manage and analyze data, and IT and electronic filing requirements. OFCCP considered the ANPRM comments in developing this proposed rule. General comments about the proposal to collect compensation data are discussed below, while comments that address specific aspects of the proposed rule and the proposed Equal Pay Report are discussed in the Section-by-Section Analysis.

OFCCP is aware that the EEOC is still considering the collection of compensation data, and that EEOC previously convened an expert panel of the National Research Council (NRC) of the National Academies (NAS) to advise on its data collection from all covered employers. The NRC report made several recommendations, including that EEOC prepare a comprehensive plan for using earnings data and that an independent contractor conduct a pilot of the proposed data collection plan.[78] Recently, EEOC prepared a Statement of Work (SOW) for its pilot study on how compensation earnings data could be collected from employers on EEOC's survey collection systems (e.g., EEO–1, EEO–4, and EEO–5 survey reports). The pilot study, among other things, seeks to identify and make recommendations on the definition of pay, the best summary measure of central tendency and dispersion for annual earnings, and the best statistical tests for analyzing annual earnings data using existing EEOC survey reports. It will also assess the cost for the data collection. This timing of the pilot study is incompatible with direction provided to DOL in the Presidential Memorandum issued in April 2014 directing proposed rulemaking within 120 days.

However, OFCCP looks forward to continuing to work with EEOC on pay data collection, including sharing information resulting from this proposed rule and engaging with EEOC on the results of its pilot project once it is completed. Informed in part by its examination of the NRC report, OFCCP studied its data collection process and identified a collection tool that it believes is suitable for its investigations and related policies and procedures. Indeed, OFCCP has addressed certain specific recommendations of that panel in its proposal and invited comments on other recommendations.

Finally, OFCCP intends to coordinate with EEOC on this data collection proposal. OFCCP has also consulted with the Department of Labor Agency Task Force members, including the Women's Bureau and the Wage and Hour Division, as well as the other Federal agencies on the Task Force.

*General Comments*

Contractors and contractor organizations, human resource information systems vendors, and law firms and consultants who assist Federal contractors with compliance, provided a diverse set of perspectives on the issues in the ANPRM. Many raised concerns about the potential burden of OFCCP's efforts to collect certain types of compensation data and asked for more clarity about the purpose of the compensation data collection tool. They were also interested in how the tool supported OFCCP's mission. While some were adamantly opposed to a data collection of any type or scale, even stating that OFCCP should withdraw or abandon the proposal, others requested a more specific proposal in order to determine whether

[78] National Research Council of the National Academies, Committee on National Statistics, *Collecting Compensation Data from Employers* (2013), at 2–3, *available at http://www.nap.edu/openbook.php?record_id=13496* (''Collecting Compensation Data''). The EEOC invited the panel to make recommendations to assist it with formulating its regulations on methods for measuring and collecting pay information.

OFCCP's proposal was appropriate. Still others favored certain specific elements or strategies discussed in the ANPRM or recommended ways to design the tool that matched existing contractor practices and IT systems.

Women's rights, civil rights and worker protection organizations strongly supported a compensation data collection tool. They generally encouraged the agency to collect data in as specific a form as possible. Many also encouraged OFCCP to go beyond the confines of compensation practices and collect data on hiring, promotion and termination such as OFCCP's former Equal Opportunity (EO) Survey. These commenters repeatedly highlighted the importance of closing the pay gap, and reiterated their concern that OFCCP has sufficient tools and data to support its worker protection mission. Noting the barriers that workers face in trying to obtain compensation in their workplace, OFCCP's role in identifying and addressing compensation discrimination is critical.

*Scope and Purpose of the Data Collection*

Many of the ANPRM comments focused on the scope of the data collection, and expressing several concerns. These included concerns that OFCCP would collect too much data, and that it would be too difficult, costly or time consuming to comply with the new reporting requirement, or that OFCCP would only collect minimal data that would not be useful or relevant to its goal of addressing pay discrimination. In general, most of these comments assumed that the purpose of a data collection effort was directed at identifying specific evidence of a pay discrimination violation—which would in fact require reporting at a highly detailed level. Instead, OFCCP proposes to use the information from the Equal Pay Report primarily as neutral criteria to prioritize how it selects contractors and subcontractors for a compliance evaluation. Under these circumstances, OFCCP can rely on summary data without needing more detailed reporting. After OFCCP selects contractors and subcontractors and schedules them for regular compliance evaluations, the agency would then request the additional more detailed data and information necessary to make a complete assessment of whether a violation exists.

Many contractors and their representatives raised specific concerns about the burden of collecting different categories of data. They noted that certain types of information, like factors that can explain compensation for individual workers, are not consistently maintained in human resources databases or even in electronic form at all. Some raised similar objections to providing data on certain elements of compensation. Many also expressed substantial concerns about the collection of individual employee pay records, in terms of both burden, and privacy and confidentiality issues. The agency has carefully considered all of these concerns in developing this proposal to minimize burden, focus on the most readily available information, and ensure the maximum potential confidentiality protection would apply to the information.

While some objections concerned OFCCP collecting too much data, others expressed alarm that OFCCP might collect too little data. Almost all of the commenters who addressed substantive issues stated that, for a compensation data collection tool to have any utility, it must collect information at a sufficiently detailed level. A large number of these commenters argued that comparing contractors was not a one-size-fits-all exercise, or that an apples-to-apples comparison could not be used given the many employee-level and firm level differences in practices and factors that affect compensation. Commenters raised concerns about aggregating elements of compensation, aggregating workers with different job titles, aggregating across locations, and many other efforts to compare compensation differences that might incorporate different potential causal mechanisms. Several commenters suggested that contractors be afforded discretion to determine what type of compensation information they would submit. Similarly, contractors wanted discretion to determine how they would aggregate or disaggregate information. Both comments aimed to reduce burden or to compensate for factors that may affect compensation data.

Notably, although contractors, their representatives, and the civil and workers' rights commenters often disagreed about aspects of this endeavor, they largely agreed on this point. Most commenters questioned whether OFCCP could get an accurate picture of pay discrimination without gathering information at a substantial level of detail. Nevertheless, while contractors and employer organizations viewed this problem as fatal to the endeavor, pointing out the complexity and burden of detailed data collection, advocates for workers viewed it as both necessary and feasible. OFCCP agrees that establishing pay discrimination can be complex and nuanced, and would potentially require substantial data and other information. That is why the agency is not seeking to establish pay discrimination violations through a general reporting requirement. Determinations as to whether a contractor has violated the Executive Order may depend not only on data analysis, including individual compensation records, but also on the specific facts of the case. In order for the proposed report on compensation to be an effective tool, the data collected must be uniform and easy to compare. Allowing contractors to choose the type of data to submit, or having contractors submit a large number of unique job groupings or compensation types or explanatory factors, would prevent the tool from serving its intended purpose.

Indeed, data collected under the proposed Equal Pay Report would not be the only data that OFCCP uses to evaluate contractor pay practices. If OFCCP selects a contractor for a compliance evaluation, or is investigating a complaint, that review would cover compensation data beyond what is in the contractor's Equal Pay Report and would involve a more specific and detailed data request. To assess individual contractor pay practices, OFCCP can request significant detail during compliance evaluations about types of compensation, detailed job groupings, factors affecting pay, and other specific information—including analyzing individual employee—level compensation records. OFCCP compensation investigations address a broad range of practices and categories of compensation, and generally cover a broad set of workers. Specific investigations may rely on more detailed job category information, and consider potential explanatory factors like experience or education. In general, OFCCP will conduct an analysis relevant to the contractor's specific industry, workforce and practices, based on the available facts and data. OFCCP will also investigate hiring, promotion and other employment practices. Any final determination of a violation will be based on a factually sound, analytically rigorous, and legally appropriate assessment. Summary data provides a preliminary look at potential compensation disparities, allowing OFCCP to conduct more detailed compliance evaluations much more efficiently.

Notably, one commenter who focused on OFCCP's goal of using the data collection to prioritize contractors for further evaluation also proposed that OFCCP collect data in a manner very similar to the Equal Pay Report framework proposed in this NPRM. This commenter, a law firm with substantial

experience representing contractors in OFCCP compliance evaluations, stated that OFCCP should only collect a simple level of data sufficient to identify disparities and not attempt to collect enough information to draw conclusions about discrimination—because of burden and cost. OFCCP's proposal is consistent with this approach, as it is limited to summary data, and will be used for prioritizing contractors and subcontractors for evaluation, rather than making ultimate determinations of compliance.

A final set of issues regarding the overall scope and design of a compensation data collection tool concerned other ways OFCCP might use these data. For example, in the ANPRM, OFCCP discussed industry trend analysis and research. Some commenters suggested that such activities were outside of OFCCP's mission or authority. OFCCP does not intend to collect this data in order to conduct general compensation analysis unrelated to potential scheduling and enforcement, or simply to conduct its own independent peer-reviewed research. For example, OFCCP intends to analyze compensation data at an industry level in order to compare peer employers, and may use it to conduct research and analysis regarding how well certain aspects of the data used for scheduling ultimately predict the likelihood of violation. In addition, OFCCP intends to disclose certain aggregate data in order to assist contractors and subcontractors seeking to compare their own pay practices against others using the kind of industry-based standards described below. OFCCP does not contemplate any other specific use or release of this data.

*Potential Benefits to Workers*

A number of the commenters discussed how the collection and use of compensation data could confer broad benefits on workers and contractors. Many addressed the significant social problem of the pay gap, highlighting the importance that OFCCP have adequate enforcement tools to ensure that Federal contractors and subcontractors do not discriminate in pay.

In particular, women's and civil rights organizations noted that the prevalence of pay secrecy policies makes OFCCP's ability to obtain and review compensation data even more important. Workers find it extremely difficult to get information on pay practices or determine if they are being paid less because of pay discrimination. On April 8, 2014, President Obama issued Executive Order 13665, prohibiting discrimination by Federal contractors against employees and job applicants who inquire about, discuss, or disclose wages.[79] This Executive Order complements the proposed data collections by improving the overall transparency of contractor pay practices.

First, OFCCP agrees that collecting compensation data from Federal contractors can improve OFCCP's ability to enforce laws that prohibit contractor pay discrimination. This includes protecting contractor employees and their families from experiencing the negative effects of pay discrimination that can significantly reduce lifetime earnings, and improving OFCCP's ability to identify employees who were victims of discrimination and ensure they receive the remedies they deserve.

Second, because workers often do not know about pay discrimination and therefore cannot act to address it on their own behalf, improving OFCCP enforcement is important. Almost half of all workers report that they are prohibited from or strongly discouraged from discussing their own compensation with workplace colleagues.[80] In a compliance evaluation, OFCCP can request and review workforce data directly, and the agency may find problems of which workers are unaware.

A single OFCCP systemic investigation can resolve claims on behalf of a large group of workers. This benefits workers in the class directly, through back pay and reforms to pay practices that can improve pay equity over the long term. By collecting compensation data, OFCCP expects to increase both the number of pay discrimination cases it pursues and the proportion of systemic investigations. This would increase the credible deterrent effect of OFCCP enforcement—conferring benefits on workers at many other establishments by encouraging greater voluntary compliance.

Indeed, OFCCP expects that contractors and subcontractors are more likely to conduct the required self-analysis and correct existing problems if they regularly report their compensation data to OFCCP, and if they have access to the compliance assistance mechanisms OFCCP seeks to provide through Equal Pay Report data. In other words, OFCCP's impact is broader than only the establishments it investigates, but includes establishments it does not evaluate, ultimately further reducing the number of workers underpaid due to discrimination.

*Equal Opportunity Survey*

In 2000, OFCCP sought to collect data on compensation and other employment practices from Federal contractors through a mechanism known as the Equal Opportunity Survey.[81] Field tests of the survey instrument supported the conclusion that general survey data collection on employment practices from Federal contractors was feasible and that there would not be substantial non-response issues. In 2006, OFCCP rescinded the Equal Opportunity Survey in light of conflicting data on its effectiveness.[82] A number of commenters suggested that aspects of the Equal Opportunity Survey should serve as a model for OFCCP, like collecting data on a broad range of employment practices. Others stated that the Equal Opportunity Survey demonstrates OFCCP cannot and should not attempt to collect regular summary data from contractors, questioning the Equal Opportunity Survey's ultimate predictive power. OFCCP extensively reviewed the agency's experience with the Equal Opportunity Survey and identified some areas that might be considered in the development and design of the proposed Equal Pay Report. Notably, OFCCP never fully implemented the survey and never deployed a clear strategy or sufficient resources to analyze and apply the data for enforcement purposes.

OFCCP applied the lessons learned from the Equal Opportunity Survey, developed a plan for analyzing the data, and its compensation enforcement initiative will benefit from infrastructure improvements. In particular, OFCCP developed a careful plan for analyzing the data and using it to schedule compliance evaluations as described in this NPRM and related ICR. OFCCP also envisions periodically assessing its use of Equal Pay Report data to select contractors and subcontractors that are likely violators. Moreover, OFCCP is simplifying its approach by focusing on compensation data, unlike the Equal Opportunity Survey, which attempted to collect, track and use data on a variety of employment practices.

*EEOC and the National Research Council Report*

The EEOC is also exploring compensation data collection, through a

[79] Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information, 79 FR 20749 (April 11, 2014).

[80] Institute for Women's Policy Research, *Pay Secrecy and Wage Discrimination,* (June 2011), *available at http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination.*

[81] 65 FR 68022, 68046 (November 13, 2000).

[82] *See* 76 FR 49398, 49399 (August 10, 2011).

different, complementary process to OFCCP's NPRM. EEOC commissioned an expert panel of the NRC of the National Academies to review options for collecting compensation data from employers. A number of commenters expressed concern that OFCCP and EEOC were not coordinating and intended to propose conflicting or overlapping reporting requirements. Over the past five years OFCCP and EEOC, both member agencies of the National Equal Pay Task Force, have discussed the importance of pay data collection and the approaches both agencies might take. OFCCP and EEOC will continue to coordinate on both this NPRM and the results of the EEOC's pilot study in order to minimize unnecessary burden, duplication, and inconsistency.

OFCCP provided information to EEOC's panel, and reviewed and analyzed the final report submitted to the EEOC.[83] As explained below, in a number of places the NPRM incorporates or discusses certain elements of the NRC report about the EEOC. The NPRM also reflects serious consideration of the panel's recommendations that might be applicable to the proposed OFCCP data collection.

First, this NPRM addresses the recommendation that Federal agencies state a clear plan for collection and use of pay data. Indeed, this document explains OFCCP's plan in detail, both in terms of the proposed scope of the data collection and the proposed use of data to engender greater voluntary compliance and to support improved efficiency in enforcement. The agency seeks comments on both of these points. This NPRM specifically tracks the panel's summary data option, which proposes collecting compensation data summarized by the EEO–1 job categories and demographic categories.[84] The NPRM also details how OFCCP intends to protect the confidentiality of information submitted by contractors in light of the report's discussion about confidentiality.

OFCCP's approach to data collection as described in this NPRM may be contrasted to the NRC's recommendations in two ways: (1) Defining the appropriate measure of compensation, and (2) the necessity of conducting an external formal pilot study of the data collection proposal prior to engaging in rulemaking. The NRC recommended using the definition of compensation found in the Occupational Employment Statistics Survey (OES) by BLS. The panel stated that this would be the easiest measure for employers to generate data out of current recordkeeping systems.[85] As set forth in the Section-by-Section analysis below, OFCCP believes that the OES definition of wages is not an appropriate measure of compensation for our data collection because it is narrower in scope than W–2 earnings and is likely to be more burdensome to provide.

W–2 earnings account for a broad range of pay elements such as bonuses, overtime, awards, allowances and reimbursements, and commissions.[86] By contrast, the OES definition excludes common pay elements such as overtime and other forms of premium pay.[87] Using the OES definition would limit OFCCP's ability to analyze pay disparities with respect to these common pay elements. In addition, employers generally report OES wages in terms of the number of employees they have within specified hourly or annual wage bands or ranges, rather than the actual wages paid to each employee. This means that the OES approach is untested in the context of reporting actual wage rates. Thus, OFCCP has concluded that the OES approach is less favorable than using W–2 earnings, with or without hours worked. OFCCP requests comments on which approach could impose the least burden on contractors given the capacity of existing electronic payroll records and other HRIS systems. OFCCP welcomes comments on:

- The cost of providing W–2 earnings data, and
- the cost of providing compensation data using the OES definition.

The NRC report also recommends conducting an independent external pilot study on the Equal Pay Report to test the collection instrument and the use of the data.[88] The Presidential Memorandum envisions that OFCCP will propose a rule in August 2014 on a compensation data tool. It is a reality, however, that EEOC's pilot study is following a different timeline. This does not prevent the two agencies from coordinating and collaborating on the compensation tool in the future. With respect to the NRC's recommendation that OFCCP conduct its own pilot project, OFCCP considered this recommendation and determined that the agency has already engaged in such a process with its Equal Opportunity Survey. The OFCCP studied that survey closely, identified and addressed many of the issues a pilot would uncover. While conducting a pilot would provide information regarding the Equal Pay Report's effectiveness, and identify ways to improve the collection, the cost and burden of conducting a pilot may well outweigh any potential benefit. All of the categories of information are already in use, well understood, and are relatively simple to collect. The field-testing of the Equal Opportunity Survey points to the general feasibility of compensation data collection, and the report calls for data that most covered Federal contractors and subcontractors should already maintain.

The OFCCP notes that its prior experiences with the Equal Opportunity Survey have informed this NRPM. As a result of the 2000 Equal Opportunity Survey and recent stakeholder listening sessions, OFCCP is aware that requesting a broad array of information related to multiple contractor employment practices, as the Equal Opportunity Survey did, creates challenges for contractors and the agency. Consequently, the proposed Equal Pay Report is much narrower in scope. OFCCP requests public comment on:

- The advantages and disadvantages of piloting the Equal Pay Report,
- the extent its prior work with the Equal Opportunity Survey satisfies the purposes of a pilot, and,
- the design of a pilot of the Equal Pay Report.

The OFCCP, mindful of the NRC's recommendations directed to the EEOC on protecting the confidentiality of contractor pay data,[89] believes these concerns are addressed in the NPRM.

[83] National Research Council of the National Academies, Committee on National Statistics, *Collecting Compensation Data from Employers* (2013), *available at http://www.nap.edu/openbook.php?record_id=13496* (''Collecting Compensation Data'').

[84] *Id.* at 60.

[85] *Id.* at 58.

[86] Internal Revenue Service, ''Wages, Salaries, and Other Earnings,'' *http://www.irs.gov/publications/p17/ch05.html* (last accessed May 30, 2014).

[87] The measure of compensation used in the OES includes factors such as the base rate of pay, cost of living allowances, commissions, production bonuses, and tips. The W–2 earnings include these factors, but accounts for additional forms of compensation such as overtime, shift differential pay, and other bonuses. *Compare* Bureau of Labor Statistics, ''Occupational Employment and Wages—May 2013,'' at 7, *available at http://www.bls.gov/news.release/pdf/ocwage.pdf, with* Internal Revenue Service, ''Employee Compensation,'' *http://www.irs.gov/publications/p525/ar02.html#en_US_2013_publink1000229086.*

[88] National Research Council of the National Academies, Committee on National Statistics, *Collecting Compensation Data from Employers* (2013), at 87, *available at http://www.nap.edu/openbook.php?record_id=13496* (''Collecting Compensation Data'').

[89] *Id.* at 5, 77. Recommendation number five in the report was for the agencies to ''*consider* whether the protections, now insured through the mechanism of interagency memoranda-of-understanding, should be incorporated in legislation.'' (emphasis added). Recommendation

Finally, OFCCP addresses ANPRM comments on its coordination with the EEOC's process for considering compensation data collection. The OFCCP concluded that developing a general data collection requirement for Federal contractors only, as in the proposed rule, is unlikely to conflict with any specific data collection requirement that EEOC may decide to propose in the future from a broader group of employers, especially if EEOC is proposing using its existing EEO–1 Report format to collect its compensation data. Further, the Presidential Memorandum directed the proposal of a rule by DOL in August 2014 while the EEOC process is likely to take 18 to 24 months to complete once a contract is awarded for its pilot study. To the extent the EEOC ultimately determines it will collect compensation data from employers, the flexibility built into the proposed rule would allow OFCCP to modify its data collection as needed to harmonize it with any EEOC approach. Indeed, OFCCP's proposed Equal Pay Report and collection of compensation data from contractors is also likely to assist the EEOC in its determination of whether and how to collect compensation data from a broader set of employers in the future.

*OFCCP's Legal Authority To Collect and Use Compensation Data*

A few questions arose in the comments to the ANPRM regarding legal issues, mostly involving whether OFCCP may collect data and use it for analysis by industry, across multiple facilities, and/or to develop a subset of contractors and subcontractors to prioritize for compliance evaluations. These commenters assert, incorrectly, that the Fourth Amendment of the U.S. Constitution requires that OFCCP use a ''random'' selection procedure to identify the contractors and subcontractors that will undergo a compliance evaluation. While selection procedures are outside the scope of the proposed rule, they are part of the purpose for developing the proposed Equal Pay Report. For this reason, OFCCP would like to address in this preamble several comments that incorrectly state the requirements of the Fourth Amendment.

First, when OFCCP requests that a contractor submit data for OFCCP to review off-site during the desk audit stage of a compliance evaluation, the Fourth Amendment only requires that the disclosure sought be reasonable.[90] A request is reasonable if it is ''sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.'' [91]

When OFCCP selects contractors and subcontractors for on-site compliance reviews, which are administrative searches for purposes of the Fourth Amendment, it need not do so ''at random.'' Rather, to satisfy the requirements of the Fourth Amendment, contractors and subcontractors may be selected for on-site compliance evaluation based on: (1) Specific evidence of an existing violation; (2) reasonable legislative or administrative standards that have been met with respect to that particular contractor; or (3) an administrative plan containing specific neutral criteria.[92] Examples of acceptable neutral criteria include, among other factors, a contractor's geographical location, history of violations, number of employees, and work in a specific industry. The requirement that selection be based on specific neutral criteria is simply meant to ensure that selections are not ''the product of the unreviewed discretion of the enforcement officer.'' [93] If OFCCP were to include in its administrative contractor selection plan for on-site compliance reviews criteria that are based on information obtained from the proposed Equal Pay Report, then the agency would do so in a manner that comports with the requirements of the Fourth Amendment.

Finally, it is worth observing that identification as a potential violator based on data from the proposed Equal Pay Report would not itself result in any sanction or adverse action against the contractor; the contractor would be prioritized for a compliance evaluation, a procedure which any Federal contractor is already subject to under the Executive Order.

**Section-By-Section Analysis**

*§ 60–1.7 Reports and other required information*

*§ 60–1.7(a)(1) EEO–1 Report*

Existing § 60–1.7(a)(1) identifies contractors that are required to file the EEO–1 Report jointly promulgated by EEOC and OFCCP. Generally, § 60–1.7(a) requires a contractor to annually file an EEO–1 Report if the contractor has 50 employees and is either: (1) A prime contractor or first tier subcontractor with a contract or subcontract of $50,000 or more; or (2) serves as a fund depository or issuing and paying agent of U.S. savings bonds in any amount. Existing § 60–1.7(a)(1) also provides that a construction subcontractor at any tier must file the EEO–1 Report annually if it has a contract or subcontract of $50,000 or more. OFCCP proposes changing the title of existing § 60–1.7(a) from ''Requirements for Contractors and Subcontractors'' to ''EEO–1 Report.'' Since the current language of § 60–1.7(a)(1) addresses EEO–1 Report filing, the proposed new title is more precise. In addition, OFCCP proposes eliminating the reference in § 60–1.7(a)(1) to ''Plans for Progress'' because the program no longer exists. The proposed § 60–1.7(a) also includes technical changes to subparagraph numbers to add a new § 60–1.7(a)(2) and additional subheadings for clarity.

Currently, § 60–1.7(a)(2) addresses the EEO–1 reporting obligations of a new contractor. Section 60–1.7(a)(2) provides that each ''person'' required to file an EEO–1 Report under § 60–1.7(a)(1) must do so within 30 days after receiving a contract or subcontract, unless the ''person'' submitted an EEO–1 Report within the previous 12 months. The report is filed with the contracting agency or administering agency. After the initial filing, the new contractor will file annually as required under § 60–1.7(a)(1). In addition, § 60–1.7(a)(2) identifies the Deputy Assistant Secretary as having the authority to change or extend the time for filing the report. OFCCP also proposes renumbering this paragraph to § 60–1.7(a)(3), deleting the references to ''person'' and replacing them with ''prime contractor and subcontractor.'' Consistent with this change, OFCCP is proposing deleting the words ''to him'' in relation to who is awarded a contract or subcontract. OFCCP is also proposing deleting the provision in § 60–1.7(a)(2) which states that subsequent reports shall be submitted at such intervals as the Deputy Assistant Secretary may require, in order to conform the

number six is expressly directed to EEOC and states: ''The U.S. Equal Employment Opportunity Commission should seek legislation that would increase the ability of the agency to protect confidential data. The legislation should specifically authorize data-sharing agreements with other agencies with legislative authority to enforce antidiscrimination laws and should extend Title VII penalties to nonagency employees.''

[90] *United Space Alliance, LLC v. Solis,* 824 F. Supp. 2d 68, 91 (D.D.C. 2011) (citing *United States* v. *Morton Salt Co.,* 338 U.S. 632, 652–53 (1950)).

[91] *United Space Alliance,* 824 F. Supp. 2d at 91 (quoting *Oklahoma Press Publishing Co.* v. *Walling,* 327 U.S. 186 (1946)); *Bank of America* v. *Solis,* Case 1:09–CV–02009–EGS–DAR, 2011 WL 7394512 (D.D.C. Dec. 13, 2011).

[92] *United States* v. *Mississippi Power & Light Co.,* 638 F.2d 899, 907 (5th Cir. 1981); *Beverly Enterprises, Inc.* v. *Herman,* 130 F. Supp. 2d 1, 14–15 (D.D.C. 2000); *Marshall* v. *Barlow's, Inc.,* 436 U.S. 307, 320–21 (1978).

[93] *Mississippi Power & Light Co.,* 638 F.2d at 907–8.

regulatory provision to the longstanding agency practice of requiring only the annual filings. Finally, OFCCP proposes deleting the language in the existing regulation regarding extension requests. The instructions for making extension requests, which are currently set forth on EEOC's Web site, direct EEO–1 Report filers to send an email request for an extension to EEOC before the filing deadline.

*§ 60–1.7(b) Equal Pay Report*

Existing § 60–1.7(b) addresses the certification requirements for bidders or prospective contractors. Each ''bidder or prospective prime contractor and proposed subcontractor'' must state, either in the bid or in writing at contract negotiations, whether it has an affirmative action program for each of its establishments, whether it held a contract or subcontract covered by the equal opportunity clause, and whether it filed all required reports, including the EEO–1 Report. The proposed rule would renumber § 60–1.7(b), making it a new § 60–1.7(d) and renaming the paragraph to ''Requirements for bidders or prospective contractors—(1) Certification and representation of compliance with the requirements of Executive Order 11246 and its implementing regulations.'' OFCCP proposes a new § 60–1.7(b) establishing a requirement that contractors and subcontractors complete and submit a report on employee compensation. The report proposed in § 60–1.7(b)(1), called the Equal Pay Report, requires contractors to provide summary data on the compensation paid employees by sex, race, ethnicity, specified job categories, and other relevant data points such as hours worked, and the number of employees. Contractors and subcontractors must submit this report in the format and manner required by OFCCP, and must retain a copy of the submitted report in accordance with the record retention provisions in § 60–1.12.

As proposed, contractors and subcontractors must report summary compensation data; no individual employee data is required. Reporting summary data limits the amount of information contractors and subcontractors must collect and report to the agency on a regular basis. While OFCCP will still consider individual employee compensation data during compliance evaluations or complaint investigations related to a contractor's pay practices, aggregate data is adequate for the purpose of establishing objective industry compensation standards against which individual contractors can be measured. While micro data, rather than aggregate data collected from all contractors, could arguably improve the identification of potential violators, collecting this data would likely create considerable cost and burden for contractors. Collecting aggregate data should also address concerns about the possible release of individual compensation data. OFCCP's decision to collect aggregate data reduces the likelihood that an individual employee's information would be inadvertently disclosed, and data reported in the aggregate makes it more difficult to identify the amount paid to any particular individual. Moreover, OFCCP does not intend to publicly release the underlying data contractors and subcontractors submit on their Equal Pay Reports. The agency will protect the confidentiality of data submitted through the Equal Pay Report to the maximum extent permitted by law, and plans to design a web-based portal for reporting and maintaining compensation information that conforms with applicable government IT security standards. Finally, on the issues of confidentiality and security, the information will be accessible to a small group of agency employees who need to know the information, and the data will not be widely circulated. These measures should reasonably ensure the security and confidentiality of the aggregate data.

The proposed rule collects only information on compensation, and not any other employment practices. This distinguishes it from the former Equal Opportunity Survey. In the agency's view, information on other employment practices adds complexity without necessarily conferring sufficient benefit. To the extent differences in promotions, hiring into higher paying jobs, or other practices contribute to race or gender-based pay disparities, examining average pay differences can help identify those effects. One common way to identify discriminatory promotion patterns is by first observing underlying compensation differences across jobs, then testing to see if discrimination in promotion rates explains the lower earnings. Further, while OFCCP has identified categories of widely available and comparable data sources relevant to analyzing compensation, the agency has not identified analogous data sources that contractors and subcontractors generally maintain on other employment practices in simple, comparable, externally verifiable formats. OFCCP will continue its careful review of information on hiring, promotion, termination and other employment practices through its existing compliance evaluation procedures.

*Definition and Measure of Employee Compensation*

Elements of compensation can vary substantially depending on the types of workers and industries. Consequently, the earlier ANPRM asked several questions designed to elicit feedback on how to measure compensation. In general, responses addressed three strategies: (1) Base pay, (2) total compensation disaggregated into separate elements like base pay, bonuses, overtime or commissions, and (3) total compensation aggregated into a single amount. Contractors and representatives of the business community stated a preference for base pay as a measure. These commenters noted that base pay is the most common and comparable element of compensation across employees. They were concerned that aggregating multiple forms of compensation would not allow for the consideration of the different factors that go into explaining base pay. These factors may or may not be the same for explaining bonuses, overtime or other compensation elements.

On the other hand, employee groups, civil rights and worker advocacy organizations generally favored total compensation disaggregated into separate pay elements. These commenters believed that this strategy is best for addressing discrimination in compensation that does not result from base pay but from other earnings sources such as bonuses, overtime, and commissions. There were few comments on the third strategy, total compensation aggregated into a single amount.

After considering the comments submitted in response to the ANPRM regarding the best way to measure compensation for purposes of a compensation data collection tool, a definition of compensation is set forth in the proposed Equal Pay Report. In the Equal Pay Report, OFCCP proposes using aggregate compensation based on W–2 earnings along with one or more other relevant data points. One relevant data element is the number of hours worked. OFCCP proposes calculating hours worked as follows:

- For salaried workers, contractors should provide actual hours of work if the contractor records actual hours. This is required for nonexempt employees but is not required for exempt employees. If contractors do not have actual hours worked data, they may default to 2080 for full-time and 1040 for part-time.

• For hourly workers, actual hours of work.

• Reported hours may also be adjusted for part year work using date of hire or dates of leave as well, but this is not specifically required.

OFCCP proposes collecting aggregate measures of hours worked so that the aggregate measures of W–2 earnings can better account for potential differences in work hours over the reporting period. Total compensation data, that is, total W–2 earnings and hours worked, provides some insight into the effect that all contractor pay practices may be having on compensation by gender, race and ethnicity. OFCCP is also proposing to collect the total number of workers and the total aggregate compensation for each group of workers as defined by EEO–1 job category, sex, race and ethnicity.

OFCCP, by using this strategy, is striking an appropriate balance between minimizing contractor reporting burden and ensuring that the proposed report includes information on non-base pay elements. By limiting compensation reporting to W–2 earnings, and using existing EEO–1 job categories, contractors are not required to develop or significantly alter payroll and human resources systems. This is the case because existing contractor systems currently gather and report W–2 earnings data, and use EEO–1 job categories for required EEO–1 reporting. OFCCP similarly believes that existing contractor systems record the number of hours worked by employees or maintain sufficient information to report the requested data.

Though we are proposing the use of aggregate compensation based on W–2 earnings, and one or more relevant data points, we did examine the usefulness of the Occupational Employment Statistics Survey (OES) definition as a measure of employee compensation. The OES is a semiannual mail survey and participation is not compulsory, and it does not collect data by gender, race, and ethnicity.[94] It uses 800 detailed occupations based on the Office of Management and Budget's Standard Occupational Classification (SOC) system, and collects wage data from private-sector employers and reports it using 12 intervals or pay bands. The number of employees in each pay band is reported. The definition for wages includes a base rate of pay, cost-of-living allowances, guaranteed pay, hazardous-duty pay, incentive pay including commissions and production bonuses, and tips. The definition excludes overtime pay, severance pay, shift differentials, nonproduction bonuses, employer costs for supplementary benefits, and tuition reimbursements. The agency believes that the W–2 earnings are most appropriate for setting objective industry standards because all contractors must annually report W–2 earnings to the IRS. This compulsory reporting by all contractors provides a form of external validity and accountability that may improve the accuracy of the Equal Pay Report measures. Because the current OES survey relies on pay 12 intervals or bands, the survey sheds little light on the validity of requiring employers to report specific wage rates using that definition or the potential burden. To simply report the number of workers in a range, the employer may not need to calculate each worker's hourly rate with precision. Indeed, following the strict definition of how to calculate the rate—which involves selecting certain individual compensation elements but not others, compiling them and then incorporating hours—appears more burdensome than simply reporting W–2 earnings. In the absence of any reference to specific evidence or data in the report, it is not clear how and why the NRC determined that using the OES pay definition is the least burdensome measure.[95]

A concern regarding aggregate W–2 earnings is the potential inaccuracies when comparing part-time and full-time employees, and employees who have worked only part of the year. OFCCP proposes to address this issue by also collecting total hours worked for each group of employees whose compensation is being summarized. The Fair Labor Standards Act (FLSA) requires employers to keep records of actual hours worked for all non-exempt employees, whether hourly or salaried.[96]

New IRS reporting requirements for the Affordable Care Act (ACA) mandate that employers report the number of employees working at least 30 hours per week making it necessary that employers track hours, [97] although the ACA does allow employers to use certain default assumptions for salaried workers.[98] This new requirement covers employers who are close, though not identical, in size to the proposed Equal Pay Report coverage standard.[99] For this reason, OFCCP believes many contractors will be able to provide actual hours worked even for exempt employees. However, OFCCP also proposes to allow contractors to report either actual hours worked or to apply default assumptions about work hours for those employees who are exempt from the FLSA. Comments on the following are particularly useful:

• The definition of compensation and what data sources are available;

• the advantages and disadvantages of using the OES to define compensation;

• the statistical and analytical value associated with collecting hours worked, and the cost of collecting hours worked;

• the number of employees for the purpose of creating an objective industry standard against which contractors would be measured and prioritized for review; and

• the usefulness of applying existing standards for calculating worker hours and full-time or part-time status found in the FLSA, the ACA, or other existing Federal regulations.

OFCCP is not proposing that contractors provide data on ''factors'' that affect compensation. Such factors are elements that might explain differences in compensation. In analyzing compensation for potential discrimination, it is common to include

[94] National Research Council of the National Academies, Committee on National Statistics, *Collecting Compensation Data from Employers* (2013), *available at http://www.nap.edu/openbook.php?record_id=13496* (''Collecting Compensation Data''). The survey estimates are based on a sample of about 1.2 million establishments grouped into six semiannual panels over a 3-year period. Each year, forms are mailed to two panels of approximately 200,000 establishments, one panel in May and the other in November.

[95] OES samples about 400,000 establishments a year (out of a total of 6.8 million), *http://www.bls.gov/oes/2013/may/oes_tec.htm.* This means an establishment may only participate in the survey once over the course of several years. One would not necessarily expect employers to have regularly established systems to generate this specific measure if it is only requested once every five to ten years.

[96] Department of Labor, *Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA), http://www.dol.gov/whd/regs/compliance/whdfs21.htm.*

[97] This refers to the general requirement in the statute that certain employers covered by the mandate report the number of full-time employees defined as 30 or more hours per week elsewhere in the ACA. *See* 26 U.S.C. 6056(a) and (b)(2); Cornell University Law School, Law Information Institute, *http://www.law.cornell.edu/uscode/text/26/6056* (last accessed July 28, 2014).

[98] This refers to the U.S. Department of the Treasury's regulation on how to determine hours of service and status as a full-time employee for purposes of section 4980H, which includes the ability to use default assumptions. See 26 CFR 54.4980H–3; *http://www.ecfr.gov/cgi-bin/text-idx?SID=03889366cda34926fa90ba8c324777e4&node=26:17.0.1.1.5.0.1.43&rgn=div8.*

[99] The employer shared responsibility provisions apply to employers that employed (for at least 121 days of the preceding calendar year) at least 50 full-time, nonseasonal employees or a combination of full-time and part-time, nonseasonal employees that equals at least 50. 26 U.S.C. 4980H(c)(2). A full-time employee is an individual employed on average for at least 30 hours per week, 26 U.S.C. 4980H(c)(4)(A), or 130 hours per calendar month, 26 CFR 54.4980H–1(a)(21)(ii).

information about factors such as experience, education, or other differences among workers that might affect their compensation. Commenters to the ANPRM strongly agreed that factors are significant and important to explaining differences in compensation. Generally, commenters from the business community stated that analyzing compensation without accounting for highly detailed factors yielded inaccurate results. They also acknowledged that collecting data on these factors would be too burdensome and complex. In particular, they stated that many employers do not keep all relevant factors in electronic form or in the same database. Other commenters, most employee groups and civil rights organizations, stated that collecting data on factors was both extremely important and quite feasible. OFCCP determined that the potential burden of collecting and analyzing factors generally outweighs any potential benefit.

Employers, including Federal contractors, vary widely in both the factors they use to determine compensation, and in how and whether they maintain that data in electronic form. Collecting information on factors would be much more expensive and time-consuming for both contractors and the agency. Finally, data at this level of detail would be extremely difficult for OFCCP to analyze meaningfully without extensive and time-consuming work devoted to deciphering and understanding the coding choices of each contractor, and cleaning and recoding many potentially inconsistent data fields. OFCCP's proposed methodology, to some extent, takes into account the particular compensation factors that may explain some or all of an overall pay gap reported by a particular contractor. This is so because the information reported by contractors within an industry, using the Equal Pay Report, will be used to develop the objective industry standard. It is assumed that the compensation factors within an industry may not vary widely, though some differences are still likely to exist. Individual contractors in an industry will be compared to the objective industry standard and the amount of difference between the two will help prioritize contractors for compliance evaluations. It is during the scheduled compliance evaluation, however, that OFCCP can meaningfully analyze a contractor's particular compensation practice, scheme, and philosophy, including the particular factors used to set compensation levels.

*Job Categories for Reporting Compensation Information*

Many substantive comments addressed how to group workers for purposes of reporting compensation information. Generally, commenters addressed four possible approaches: (1) Grouping by job title, (2) grouping by AAP job group, (3) grouping by EEO–1 job category, and (4) deferring to the contractor's choice of grouping among multiple options. There was no clear consensus from the comments.

Proposed § 60–1.7(b)(1) provides that data must be provided by ''specified job categories'' without identifying those categories; the Equal Pay Report will specify the job categories, as well as several other data points relevant to developing the objective industry standard. In the report, OFCCP is proposing to use the existing ten EEO–1 job categories and subcategories for contractors who already report using the EEO–1 form. The EEO–1 job categories have been used for many years and are clearly defined. Any contractor that is or was previously covered by the EEO–1 reporting requirement is already required to categorize their employees into these categories on an annual basis. Therefore, using the EEO–1 job categories will remove the step of categorizing employees for purposes of completing the Equal Pay Report. The EEO–1 categories are, therefore, the least burdensome and least confusing means of categorizing employees.

Unlike job titles and AAP job groups, which are defined by each contractor and not standardized across all contractors, contractors must consistently maintain their EEO–1 job categories. This creates clear comparability across contractors. A job grouping system is necessary for the Equal Pay Report to fulfill its intended purpose; without compensation data defined by uniform job groupings, contractor compensation practices towards similar groups of employees could not be easily compared to identify anomalies. These comparisons will not be used to determine violations, and any distortion caused by nuances not recognized by the grouping system can be clarified during a compliance evaluation.

A substantial number of ANPRM commenters argued against the use of EEO–1 job categories because they fail to reflect elements such as differences in skill, experience, education, and other factors potentially affecting pay. Comparing employers in similar industries will help minimize these differences. However, any job grouping system used will necessarily involve creating groups containing non-identical positions, with unique factors that may affect pay. In addition, comparing workers only within narrowly defined job groupings can obscure patterns of pay disparity that transcend jobs, and that may be caused by discrimination in promotion, job assignment or other glass ceiling or channeling practices. Broader groupings allow OFCCP to consider larger patterns of pay disparity that may transcend specific positions, levels or units. Notably, the National Academies panel recommended EEO–1 job categories for reporting of summary data, because of their broad applicability, the experience of enforcement agencies with their use, and their clarity and simplicity.[100]

However, as the comments to the ANPRM demonstrate, there is a variety of potential approaches to grouping data. For the reasons stated, OFCCP is proposing the use of the EEO–1 job categories for the Equal Pay Report but is interested in comments on the extent to which other possible job or occupation groupings are sufficiently universal that they could be used when developing objective industry compensation standards.

*§ 60–1.7(b)(2) Who Must File the Equal Pay Report*

The ANPRM asked a series of questions related to the issue of which contractors should be required to provide compensation data via a data collection instrument. In response, some commenters made additional suggestions regarding who should be included or excluded. In general, these comments addressed applying the data collection requirement to all contractors, to prior violators only, to supply and service contractors only versus including construction contractors, to small businesses, to bidders or new contractors, and addressed whether and how multi-establishment contractors would report.

Proposed § 60–1.7(b)(2) identifies the contractors and subcontractors that must submit the Equal Pay Report. Proposed § 60–1.7(b)(2) states that the contractors and subcontractors that are required under § 60–1.7(a)(1) to file EEO–1 Reports with the Joint Reporting Committee must complete and file the proposed Equal Pay Report if they also more than 100 employees and their contract or subcontract covers a period of at least 30 days, including modifications. Generally, this covers prime contractors and first tier subcontractors that are private employers and are large enough to be

[100] ''Collecting Compensation Data'' at 60.

subject to the requirement to prepare an affirmative action program.

Some commenters suggested that the reporting requirement should be applied exclusively to contractors and subcontractors previously identified as violators by the OFCCP. This limitation, they assert, would avoid imposing an additional burden on contractors and subcontractors who have not previously committed violations. The primary purpose of the proposed Equal Pay Report is to refine the agency's neutral selection of contractors and subcontractors by focusing on those that are most likely to be in violation of OFCCP's regulations. In particular, the Equal Pay Report provides OFCCP with a reasonable and practical means of prioritizing likely violators for compliance evaluations. For the report to perform its primary function, it must collect data from a large pool of contractors and subcontractors without regard to violation history. Additionally, to the extent that OFCCP seeks to use this data to make predictions about the likelihood of finding a violation, it is important to collect data from compliant contractors and subcontractors to provide comparisons. Therefore, collection of data regardless of prior violation history is essential to the benefits that this tool will confer.

Construction contractors and subcontractors are not specifically identified in the proposed rule, but they would be required to complete and file the proposed Equal Pay Report if they are required under § 60–1.7(a)(1) to file EEO–1 Reports, and meet the contract value and employee thresholds proposed in this NPRM. Many construction contractors and subcontractors do not meet the standards for filing EEO–1 Reports, either because of the number of employees or the short duration of employment.[101] OFCCP seeks comments on:

- The potential burdens for construction contractors and subcontractors, including comments on the feasibility of data collection,
- the sophistication of current payroll and HR systems, and
- the potential concerns regarding communication between prime and subcontractors about the proposed reporting requirements.[102]

Numerous commenters expressed concern that the reporting requirement would impose an undue burden on smaller contractors and subcontractors, damage their ability to compete, or serve as a disincentive to becoming a Federal contractor. A small number requested an exemption from the requirement by means of raising the jurisdictional threshold. A few others argued that it would be better to design two sets of questions, one for smaller contractors and subcontractors and one for larger contractors and subcontractors. OFCCP used a two-tiered approach for addressing these concerns.

First, the existing EEO–1 reporting requirements apply to contractors who are private employers with 50 or more employees and satisfy other specified jurisdictional thresholds.[103] Existing Federal regulations already require that these contractors create affirmative action programs, which include requirements to analyze compensation and provide compensation data to OFCCP upon request, as well as to file EEO–1 Reports using the employee classifications and job categories that would apply under this proposed rule. With the Equal Pay Report, OFCCP will continue to exempt contractors with fewer than 50 employees and will have similar jurisdictional thresholds as the EEO–1.[104] Further, by eliminating many of the most burdensome categories of data, OFCCP has made it easier for small businesses to comply.

Second, after examining small contractor considerations created in existing regulations and the rationale behind them, OFCCP is proposing to exempt even more small contractors. Contractors with 100 or fewer employees are excluded from this new reporting obligation. For example, in the regulations on equal employment opportunities and affirmative action for individuals with disabilities, OFCCP allows contractors with 100 or fewer employees to apply the aspirational utilization goal to their entire workforce rather the their job groups. By excluding contractors with 100 or fewer employees, OFCCP is further reducing the cost and burden on Federal contractors.

*§ 60–1.7(b)(3) How, When, and Where To File the Equal Pay Report*

Proposed § 60–1.7(b)(3) addresses the procedures for complying with the requirement to report on summary compensation data. The proposal would not specify a particular deadline for filing the proposed report; proposed § 60–1.7(b)(3)(i) states that the report must be filed by the date specified in the report. As noted earlier, OFCCP is proposing a January 1 through December 31 reporting period, and a report filing window of January 1 to March 31 of the following year. This window gives contractors one full quarter to compile the year-end earnings information in the format necessary for the Equal Pay Report. The December 31 date makes it easier to calculate summary W–2 earnings, as they are being simultaneously compiled for tax reporting purposes on an annual basis.

OFCCP considered other alternatives as well, including adopting the EEO–1 reporting period and filing dates. OFCCP determined that the EEO–1 dates do not give the agency a full calendar year's data, and contractors use different snapshots or payroll periods for EEO–1 reporting. Since OFCCP is proposing to collect annual W–2 earnings, contractors would be required to submit that information separately after having already filed the EEO–1 report and an interim Equal Pay Report in September. In lieu of an interim September filing date, which would possibly create additional burden, OFCCP considered delaying the report submission date until the following January. Under both approaches, OFCCP saw potential data issues and a likely increase in contractor burden.

Finally, OFCCP considered requiring contractors to report less frequently than annually. Requiring less frequent reporting would result in cost savings to contractors related to preparing and submitting an Equal Pay Report, and the amount of savings would depend on how frequently the contractor would be required to report. However, OFCCP determined that this could result in it setting objective industry standards that are based on stale or outdated data. This would compromise the integrity of OFCCP's enforcement program. For example, if there are long time lags, possibly delays of two or more years, between when a contractor submits data to OFCCP and when OFCCP uses the data to select contractors for review, important changes in the underlying data could have occurred. Since these data changes would not be reflected in

[101] 2011 Census data suggests that over 90% of companies in the construction sector have less than 50 employees. United States Census Bureau, *Statistics of U.S. Businesses—NAICS Sectors (2011), available at http://www.census.gov/econ/susb/.*

[102] Note that there are some construction contractors also covered by this proposal (those who fall within the requirements for filing an EEO–1 Report). This would not, however, include Federally assisted construction contractors. OFCCP intends to analyze Equal Pay Report data by industry; therefore, construction contractors will only be compared with other construction contractors. Selection of construction contractors for compliance evaluations uses a different process than scheduling of Supply and Service contractors.

[103] This includes being prime or first tier subcontractors with 50 or more employees who hold a Federal contract that is valued in excess of $50,000 or a company that serves as a depository of Government funds in any amount.

[104] OFCCP welcomes comment on the appropriate jurisdictional thresholds applicable to contractors covered by the proposed rule who are not private employers.

the data used by OFCCP to set the industry standard, it is possible that some contractors would be prioritized for compliance evaluations that might not have been otherwise scheduled. Currently, based on the proposed annual reporting, data reported in 2015 is for 2014. By the time the 2014 data are reviewed, edited, cleaned and verified, it could be another 10 months older before it can be used for the purpose for which it was intended. Less frequent reporting could also undermine the robustness of the data available for analysis by OFCCP. OFCCP requests public comment on how less frequent reporting could be done in a manner to address OFCCP's concern that it could be relying on stale or outdated data by collecting data in alternating years.

The proposed rule would require contractors to file the reports electronically. Proposed § 60–1.7(b)(3)(ii) provides that contractors and subcontractors must submit the Equal Pay Report electronically through OFCCP's web-based filing system by the specified filing deadline, unless a hardship exemption has been granted under subparagraph (3)(iii). Proposed § 60–1.7(b)(3)(iii) would provide that the Director may grant a hardship exemption from the electronic filing requirement where he or she concludes that electronic filing would impose an undue hardship on the contractor or subcontractor. Proposed § 60–1.7(b)(3)(iii) would require contractors and subcontractors to submit a written request for a hardship exemption and indicates that the eligibility criteria and application procedures will be available on the OFCCP Web site. Based on the number of electronic filings of EEO–1 reports, OFCCP expects that hardship exemptions would be granted only in exceptional circumstances. Examples include unexpected technical difficulties that prevent a contractor or subcontractor from electronically submitting the Equal Pay Report by the filing deadline and, in the very rare instances, when a contractor's payroll and human resources systems or other necessary systems are not automated. Contractors granted a hardship exemption would be required to submit the Equal Pay Report in the format specified in the notification granting the exemption, which, in some cases, could be a paper version of the report.

Several commenters addressed certain technical issues regarding how OFCCP might receive and maintain the data. Some contractor representatives requested the ability to upload their data directly to the agency; others expressed concern about OFCCP's capacity to safeguard confidential compensation data and its IT capacity. OFCCP will receive and maintain the compensation data using a secure IT system that fully complies with all applicable Federal Government security requirements and specifications. This will minimize the possibility of a security breach or hacking. The web portal will be password protected and information will be encrypted. Contractors will use the portal to key in their data directly or upload their own spreadsheets using standard formats. To make filing as easy as possible, OFCCP also proposes to provide a tool similar to that used by the state of New Mexico that would automate the few simple calculations necessary to file the report.[105] The New Mexico tool is an XML template that users can download, populate with their individual employee data and then generate the required summary information. A second template allows users to upload only the summary data back to the state agency, leaving the individual data in the possession of the user. New Mexico's experience using this approach has been very positive.[106]

The agency anticipates that some contractors will choose to modify their existing HRIS or payroll databases to generate the report on a regular basis. OFCCP is particularly interested in comments on:

- The important IT changes to existing HRIS or payroll systems, OFCCP system security concerns, system compatibility issues; contractor IT implementation timeframes; and
- the criteria for exemptions from the electronic filing requirement.

*§ 60–1.7(b)(4) Protecting Information Provided to OFCCP in the Equal Pay Report*

Proposed § 60–1.7(b)(4) is modeled, in part, after the confidentiality provision that was included in the repealed Equal Opportunity Survey regulation. This provision explains the information protections applicable to the proposed Equal Pay Report. OFCCP will protect the raw summary compensation data reported by contractors and subcontractors from disclosure to the maximum extent permitted by law. EEO–1 reports are not publicly available. This section specifies that OFCCP will treat information submitted for the report as confidential to the maximum extent permitted under the Freedom of Information Act (FOIA). It also states that, consistent with current agency practice, OFCCP will not publicly disclose information that could cause commercial harm to contractors and subcontractors who are still in business. In addition to what is specified in the proposal, the agency will put internal safeguards in place that include, but may not be limited to, providing limited staff access to the data, establishing staff protocols for ensuring the security of files and data, providing staff training on data security and any penalties and sanctions that may apply for wrongful disclosure of the data, and ensuring that OFCCP's IT systems meet applicable Federal Government security standards. Lastly, § 60–1.7(b)(4) states that OFCCP may publish aggregate information based on compensation data collected under this section, such as ranges or averages by industry, labor market or other groupings, but only in such a way that it does not reveal any employee specific data.

Several commenters voiced confidentiality concerns about a compensation data collection tool. Some commenters assumed that a compensation data collection instrument would require contractors to provide specific compensation information regarding individual employees at specific establishments. These commenters characterize individualized compensation data as ''especially sensitive and confidential'' and maintain that disclosure of an organization's individualized compensation information would be ''devastating'' and that it could ''decrease the contractor's competitive advantage or even threaten its business model.'' OFCCP believes that the concerns expressed by these commenters have been sufficiently mitigated by the proposal to collect summary data on employee compensation, rather than individualized compensation data, but seeks comments on other ways to address the concern.

Some commenters expressed concern that the data submitted to OFCCP could be requested under FOIA. They argue that FOIA and the Department's FOIA disclosure policy and procedures at 29 CFR part 70 do not provide adequate protections against disclosure. To address concerns about disclosure of confidential compensation data, proposed § 60–1.7(b)(4) would provide,

[105] New Mexico General Services Department, *New Mexico Pay Equity Initiative, available at http://www.generalservices.state.nm.us/state purchasing/Pay_Equity.aspx* (last accessed April 24, 2014).

[106] Institute for Women's Policy Research, *The New Mexico Pay Equity Initiative in State Contracting,* (May 2011), *available at http://www.iwpr.org/publications/pubs/the-new-mexico-pay-equity-initiative-in-state-contracting* (last visited April 24, 2014).

as did the repealed Equal Opportunity Survey regulation, that ''OFCCP will treat information contained in the Equal Pay Report as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act.''

Exemption 4 of the FOIA protects ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.'' If information falls within FOIA Exemption 4, the Trade Secrets Act, 18 U.S.C. 1905, also generally protects it. The Trade Secrets Act makes it a criminal offense for an officer or employee of the United States to disclose information relating to the trade secrets or confidential business information, including ''confidential statistical data,'' of any person, firm, partnership, corporation or association ''to any extent not authorized by law.'' Thus, because the information contained in the proposed Equal Pay Report generally falls within Exemption 4 and is protected by the Trade Secrets Act, OFCCP would not have discretion to release that information.

OFCCP's current practice is not to release data where the contractor still is in business and where the contractor or subcontractor asserts, and through the Department of Labor review process it is determined, that the data are confidential and that disclosure would subject the contractor to commercial harm. Moreover, the Department's FOIA regulations at 29 CFR 70.26 provide that business information will be disclosed under FOIA only in accordance with the procedures set forth in the regulation. The procedures instruct the submitter of business information to designate by appropriate markings either at the time of submission, or at a reasonable time thereafter, any portion of a submission that it considers to be protected from disclosure under Exemption 4. The regulations require OFCCP to notify the submitter on a case-by-case basis whenever a FOIA request is made for information the submitter has designated protected from disclosure or when OFCCP believes the information requested under FOIA may be protected from disclosure under Exemption 4. This notification gives contractors the opportunity to object to the disclosure of any data they consider confidential.

OFCCP currently collects compensation information during the course of its compliance evaluations, and the agency is not aware of any instance in which compensation data were disclosed without the consent of the contractor or subcontractor. It has always been OFCCP's policy not to release data that is determined to be confidential or has the potential to subject the contractor to commercial harm if disclosed, and this policy will be applied to the proposed Equal Pay Report as well.

*Section 60–1.7(c) Additional Information*

Existing § 60–1.7(a)(3) provides that the Deputy Assistant Secretary or the applicant, on their motions, may require a contractor or subcontractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such additional information about its employment practices as the Deputy Assistant Secretary or the applicant deems necessary for the administration of the Order. The proposed rule would include this provision in a new § 60–1.7(c), with one minor change. In proposed § 60–1.7(c) the title ''Director'' replaces ''Deputy Assistant Secretary.'' The proposed rule would include a reference to the applicability of the existing record retention provision found in 41 CFR 60–1.12; specifically, that each contractor shall retain its Equal Pay Report for a period of not less than two years from the date of the making of the report.

*Section 60–1.7(d) Requirements for Bidders or Prospective Contractors*

Section 60–1.7(b) of the existing regulations addresses the certifications concerning compliance with the requirements of Executive Order 11246 that bidders and prospective contractors must submit with their bids. The existing regulations require the bidder or prospective contractor to state in writing: (1) Whether it has developed an affirmative action program pursuant to part 60–2; (2) whether it has participated in a previous contract subject to the Executive Order's equal opportunity clause; and (3) whether it has filed with the Joint Reporting Committee, the Deputy Assistant Secretary, or the EEOC all reports due under applicable filing requirements. The proposed rule would revise and move the existing § 60–1.7(b) to a new § 60–1.7(d), and clarify that only bidders who currently hold Federal contracts or subcontracts must make a representation related to whether they are currently a Federal contractor or subcontractor and whether they filed the Equal Pay Report for the most recent filing period.

The NPRM proposes to delete the reference to part 60–2 from the paragraph's title and the paragraph itself. Instead, proposed § 60–1.7(d) would generally refer to Executive Order 11246 and the implementing regulations, making clear that the representation provisions apply to construction contractors as well as to supply and service contractors. Proposed § 60–1.7(d) would specifically require the contractor to state whether it is currently a Federal contractor required to create affirmative action programs and file EEO–1 Reports and Equal Pay Reports. If so, the contractor must state whether it has created an affirmative action program; filed the EEO–1 Report(s) for the most recent reporting period with the Joint Reporting Committee; and whether it has filed an Equal Pay Report for the most recent reporting period with OFCCP.

Several commenters provided views on the requirement to report compensation and whether it could or should apply to bidders and prospective contractors. Some suggested that OFCCP lacks the authority to collect data from bidders and that it raised the potential for unnecessary burdens or the risk of disclosure of sensitive compensation data to competitors. Under the proposed rule, the Equal Pay Report would be treated like current requirements to file EEO–1 Reports and prepare affirmative action programs. The proposed rule requires prospective contractors to make a representation as to whether they have complied with all requisite reporting as part of the bidding pre-award process, including the proposed Equal Pay Report if they currently are Federal contractors or subcontractors.

Existing § 60–1.7(b)(2) provides that the bidder or prospective contractor shall be required to submit such information as the Deputy Assistant Secretary requests prior to the award of the contract or subcontract. This provision is renumbered to proposed § 60–1.7(d)(2) without substantive changes. It does, however, add the title ''Additional information'' and changes ''Deputy Assistant Secretary'' to ''Director.''

*Section 60–1.7(e) Sanctions for Failure To File Required Reports, and Certifications and Representations*

Section 60–1.7(e) provides sanctions for the failure to file required reports, and certifications and representations. OFCCP proposes to set forth the provision regarding sanctions in a separate paragraph because it would apply to the failure to file the EEO–1 Report, the proposed Equal Pay Report, and any other report requested by the Director. Existing § 60–1.7(a)(4) addresses the sanctions under Executive Order 11246 for a contractor's failure to file timely, complete, and accurate reports. Proposed § 60–1.7(e) restates

the provision found in existing § 60–1.7(a)(4) of the regulations, but proposes several revisions. The revisions include extending sanctions for the failure to file a complete and accurate report to the filing of the Equal Pay Report, and deleting the reference to the imposition of sanctions on the prime and subcontractors by the Deputy Assistant Secretary. This deleted text is replaced with language noting that a failure to file violates Executive Order 11246 and is subject to sanctions under the Equal Opportunity Clause and specifically sections of OFCCP's regulations. To improve readability, OFCCP proposes adding the title ''Sanctions for failure to file required reports and certifications and representations.''

*Section 60–1.7(f) Use of Reports*

Existing § 60–1.7(c) states that the reports filed pursuant to this section shall be used only in connection with the administration of Executive Order 11246, the Civil Rights Act of 1964, or in furtherance of the purposes of the Order and the Act. Proposed § 60–1.7(f) sets forth the provision found in existing § 60–1.7(c) with several minor non-substantive changes. Specifically, in proposed § 60–1.7(f) ''Executive Order 11246'' is used instead of ''the order,'' the second use of the term ''the order'' is capitalized, and ''the Act'' is substituted for ''said Act.''

**Regulatory Procedures**

*Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)*

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Executive Order 13563 also requires agencies to periodically review existing rules to determine if they should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. OFCCP plans to retrospectively review this rule at an appropriate time after it is finalized. OFCCP requests public comment on how the effectiveness of this rule could be evaluated, and what data and methods would be needed to do so.

This proposed rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. The NPRM is not economically significant, as it will not have an annual effect on the economy of $100 million or more. The Office of Management and Budget has reviewed the NPRM.

The proposed regulatory changes are have been developed to enhance OFCCP's efficiency and effectiveness in enforcing laws that prohibit compensation discrimination by Federal contractors and subcontractors. More specifically, the regulatory goals include:

- Increasing contractor self-assessment of its compensation policies and practices, and expanding voluntary compliance with OFCCP's regulations so as to advance OFCCP's mission of ensuring nondiscrimination in employment and decreasing the pay gap between males and females and between races.
- Providing probative compliance information, including data on industry and/or labor market standards to promote industry-wide deterrence within the Federal contractor community and lead to modified compliance behavior in the compensation arena.
- Making data-driven enforcement decisions that support the efficient use of limited enforcement resources. OFCCP will strategically deploy its resources to focus on conducting compliance evaluations of contractors that are more likely to have compensation discrimination violations.
- Shifting, to the maximum extent possible, compliance evaluation costs from contractors that are likely to be in compliance with prohibitions on pay discrimination to contractors that are more likely not to be in compliance.
- Contributing to the stability of working Americans by helping minimize the pay gap and promoting broad societal policy objectives of nondiscrimination and equal pay.
- Providing workers victimized by discrimination the opportunity to obtain the best possible remedies and relief. OFCCP anticipates increasing its capacity to identify more violations and obtain prompt remedies through a better-informed scheduling process for the estimated 4,000 compliance evaluations it conducts annually.

*The Need for the Regulation*

The specific proposal is to publish aggregate data gathered through the Equal Pay Report by industry, labor market, or other groupings to facilitate voluntary compliance efforts by Federal contractors and subcontractors. The data OFCCP proposes to collect would allow contractors and subcontractors to evaluate their performance against their peers and make determinations about how to focus their own self-assessments, thereby potentially promoting voluntary compliance and potentially avoiding the costs incurred during a compliance evaluation and/or litigation. This data sharing would also likely have both deterrent and preventive effects. In addition to gains in deterrent effects and voluntary compliance, OFCCP anticipates positive effects in enforcement. OFCCP's current ability to use data to find pay discrimination violations is limited to those contractors and subcontractors it evaluates, which is a small portion of the contractor universe. The increased availability of data should enable OFCCP to focus and allocate enforcement resources. Workers often do not know that they may be victims of pay discrimination; thus, this rule may be viewed as addressing an informational market failure. In other words, the NPRM could provide greater transparency on contractor compensation practices. This proposed data collection should provide OFCCP with the ability to focus its enforcement activities and, therefore, is a significant step forward in addressing the pay gap.

*Background*

Research conducted by The Institute for Women's Policy Research (IWPR) concluded that the poverty rate for working women could be reduced by half if women were paid the same as comparable men. The paper determined that nearly 60 percent (59.3 percent) of women could earn more if working women were paid the same as men of the same age with similar education and hours of work.[107] The poverty rate for all working women could be cut in half, falling to 3.9 percent from 8.1 percent.[108] The high poverty rate for working single mothers could fall by nearly half, from 28.7 percent to 15 percent.[109] For the 14.3 million single

[107] Heidi Hartman, Ph.D., Jeffrey Hayes, Ph.D., & Jennifer Clark, *How Equal Pay for Working Women Would Reduce Poverty and Grow the American Economy, Briefing Paper IWPR #C411,* Institute for Women's Policy Research, January 2014.

[108] *Id.*

[109] *Id.*

women living on their own, equal pay could mean a significant drop in poverty from 11.0 percent to 4.6 percent.[110]

These statistics are intended to provide general information about the potential impacts of eliminating pay differentials among men and women, including pay differentials not attributed to discrimination. In addition, the IWPR statistics include all employers and all employees in the U.S., whereas this proposed rule would apply to only a subset of such employers and employees. Therefore, the potential impact of this rule would be much smaller than the impact of eliminating pay differentials among all working men and women.

Discrimination, occupational segregation, and other factors contribute to creating and maintaining a gap in earnings and keeping a significant percentage of women in poverty. It is worth noting, however, that some research has established that women earn less than men regardless of the field or occupation.[111] This research also suggests that persistent pay discrimination for women translates into lower wages and family income in families with a working woman. The gender pay gap may also affect the economy as a whole. In 2012, some researchers estimate that the U.S. economy could have produced additional income of $447.6 billion (equal to 2.9 percent of 2012 GDP) if women received equal pay.[112]

OFCCP worked with several other Federal agencies on the National Equal Pay Task Force to identify the persistent challenges to equal pay enforcement and develop an action plan to implement recommendations to resolve those challenges. OFCCP also consulted a number of sources in order to assess the need for the proposed rulemaking. For instance, OFCCP reviewed national statistics on earnings by gender produced by BLS and the U.S. Census Bureau. Those statistics show persistent pay gaps for female and minority workers.[113] These well-documented earnings differences based on race and sex have not been fully explained by nondiscriminatory factors including differences in worker qualifications such as education and experience, occupational preferences, work schedules or other similar factors.[114] Thus, some of the remaining unexplained portion of the pay gap may be attributable to discrimination.

Currently, OFCCP lacks sufficient, reliable data to assess the gender- or race-based pay gap experienced by employees of Federal contractors or subcontractors, including how much of the potential pay gap is attributable to pay discrimination instead of nondiscriminatory factors, and how many contractors are violating the pay discrimination laws OFCCP enforces. This proposed Equal Pay Report is a step toward collecting useful data upon which OFCCP can make data-driven enforcement decisions.

*Discussion of Impacts*

In this section, OFCCP presents a summary of the estimated costs associated with the new requirements in § 60–1.7. Comments are welcome on every aspect of the cost and burden calculations including, but not limited to, the amount of time contractors would spend on complying with the proposals in this NPRM, including those related to IT (e.g., HRIS and payroll) system changes, data collection, recordkeeping and reporting, and any alternatives. The estimated labor cost to contractors and subcontractors is based on BLS data in the publication ''Employer Costs for Employee Compensation'' issued in December 2013, which lists total compensation for management, professional, and related occupations as $51.58 per hour and administrative support at $24.23 per hour.[115] Except where otherwise noted, OFCCP estimates that 25 percent of the contractor burden hours and associated costs are related to the review and oversight of the submission of the Equal Pay Report. These activities will likely be performed at the management level. OFCCP also estimates that 75 percent of the burden hours and associated costs are related to activities such as compiling the data and completing the report. These activities will likely be performed at the administrative level. OFCCP based these time estimates on the most appropriate value of this person's time performing the task or function.

Prime contractors and first tier subcontractors with a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications, with more than 100 employees, and that are required to file an EEO–1 Report will be required to file the proposed new Equal Pay Report. OFCCP believes that the proposed new provisions may affect 21,251 Federal contractors. This estimate includes 21,224 contractor companies or 67,578 contractor establishments that filed EEO–1 Reports.[116] OFCCP is also interested in amending the regulation to 41 CFR 60–1.7 by adding a requirement that employers who file the Department of Education's Integrated Postsecondary Education Data System (IPEDS) report, have more than 100 employees, and have a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications, also file OFCCP's proposed Equal Pay Report. Therefore, we identified and included 27 postsecondary educational institutions that filed IPEDs reports in this estimate. OFCCP based the number of postsecondary educational institutions included in this NPRM on the average number of compliance evaluations conducted of postsecondary institutions over a four-year period from 2010 through 2013.

*Cost of Regulatory Familiarization*

OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors and subcontractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish compliance assistance materials including, but not

[110] *Id.*

[111] Ariane Hegewisch et al., *Separate and Not Equal? Gender Segregation in the Labor Market and the Gender Wage Gap, Briefing Paper IWPR #C377,* Institute for Women's Policy Research (2010).

[112] *Id.*

[113] According to the latest Bureau of Labor Statistics (BLS) data, the weekly median earnings of women are about 82 percent of that for men. Bureau of Labor Statistics, U.S. Department of Labor, Current Population Survey, Labor Force Statistics from Current Population Survey, *available at http://www.bls.gov/cps/earnings.htm#demographics*; Updated quarterly CPS earnings figures by demographics by quarter for sex through the end of 2013 *available at http://www.bls.gov/news.release/wkyeng.t01.htm.* Looking at annual earnings reveals even larger gaps—women working full time earn approximately 77 cents on the dollar compared with men. U.S. Bureau of the Census, Income, Poverty and Health Insurance Coverage in the United States, Current Population Reports 2011 (Sept. 2012), *available at http://www.census.gov/prod/2012pubs/p60-243.pdf.* BLS data reveals that African-American women make approximately 68 cents, Latinas make approximately 59 cents, and Asian-American women make approximately 87 cents for every dollar earned by a non-Hispanic white man. OFCCP acknowledges that these statistics do not account for nondiscriminatory factors that may explain some of the differential.

[114] Women in America: Indicators of Social and Economic Well-Being (2011) (male-female pay gap persists at all levels of education for those working 35 or more hours per week), according to 2009 BLS wage data.

[115] Bureau of Labor Statistics, *Civilian workers, by major occupational and industry group, available at http://www.bls.gov/news.release/ecec.t01.htm* (last accessed March 28, 2014).

[116] Estimates based on number of contractors and contractor establishments with at least 50 employees who filed EEO–1 reports for 2012 and answered ''Yes'' to Question 3.

limited to fact sheets and ''Frequently Asked Questions.'' OFCCP will also host webinars for the contractor community that will describe the new requirements and conduct listening sessions to identify any specific challenges contractors believe they face, or may face, when complying with the requirements.

OFCCP estimates that it will take a minimum of 1 hour to have a management professional at each establishment either read compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn more about the new requirements. The estimated cost of this burden is based on data from the BLS in the publication ''Employer Costs for Employee Compensation'' (December 2013) which lists total compensation for management professionals at $51.58. Therefore, the estimated burden for rule familiarization is 67,605 hours (67,605 contractor establishments [117] × 1 hour = 67,605 hours). We calculate the total estimated cost as $3,487,066 (67,605 hours × $51.58/hour = $3,487,066) or $52 per establishment.

*Cost of Proposed Provisions*

The NPRM proposes requiring contractors and subcontractors to compile, complete and submit summary compensation data using the proposed Equal Pay Report. Coverage and exemptions for the proposed report would track those that already apply to contractors and subcontractors when filing the existing EEO–1 Report. In addition, contractors would have to: Meet the Equal Pay Report thresholds on the number of employees, and (1) have a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications; or (2) serve as a depository of Government funds in any amount; or (3) be a financial institution that is an issuing or paying agency of the U.S. savings bonds and savings notes. The reporting requirement would include construction subcontractors below the first tier that perform work at the construction site if they meet the requirements of criteria specified in proposed § 60–1.7(a)(1).

Federal contractors and subcontractors would be required to submit summary data by sex, race, ethnicity, job categories, and other relevant data points such as hours worked. In order to file the proposed report, OFCCP would provide a secure, easy-to-use, flexible web-based interface that permits them to either directly key in data or upload the data using a variety of standard formats. OFCCP proposes to provide detailed instructions on the completion and submission of the proposed Equal Pay Report. The NPRM contemplates that OFCCP would also provide a formatted XML template that could be downloaded and used to help automate the limited calculations necessary to file the reports from a spreadsheet of the contractor's current employee data exported from its HRIS and/or payroll system. Common payroll software packages and services could be programmed and/or integrated, as necessary, to generate this report for uploading. For contractors and subcontractors that may be unable to submit the report electronically, OFCCP proposes providing a hardship exemption that would allow for an alternate filing method for the report. The hardship request must be submitted, in writing, to the Director of OFCCP. The new requirements are limited to § 60–1.7. The NPRM proposes amending § 60–1.7(b) to mandate that contractors and subcontractors required to submit the EEO–1 Report provide data on employee compensation using the Equal Pay Report. In addition, OFCCP is considering covering postsecondary academic institutions that file the IPEDS report with the Department of Education and is seeking comment on that addition to the reporting requirement. More specifically, existing § 60–1.7(b) provisions on certification requirements for bidders would be placed in a new subsection, § 60–1.7(d).

Proposed § 60–1.7(b)(1) describes the requirements of the new report. The Equal Pay Report, promulgated by OFCCP, requires contractors and subcontractors to provide summary data on the compensation paid to employees by sex, race, ethnicity, specified job categories, and other relevant data points such as hours worked, and the number of employees. Contractors must submit the Equal Pay Report in the format and manner required by OFCCP.

As noted above, contractors would also be asked to submit hours worked. OFCCP proposes using the well-established EEO–1 job categories, with consideration of alternatives for postsecondary academic institutions. Based on the experience of the Joint Reporting Committee with electronic filing of the EEO–1 Report, OFCCP believes that 99 percent of its contractor and subcontractor establishments or 66,929 will complete the proposed form online and 1 percent or 676 will complete the proposed form manually. To complete the proposed report contractor establishments will need to identify, collect, summarize, and analyze demographic information and compensation data from their HRIS and payroll system.[118] OFCCP estimates contractor and subcontractor establishments with automated systems will take 6 hours to generate the report data using their IT and/or HRIS systems, conduct the analysis, review the analysis, complete the online report form, review the report, submit it to OFCCP online, and save a copy of the report. Thus, OFCCP estimates that the burden for completing the proposed form online will be 401,574 hours (66,929 contractor establishments × 6 hours = 401,574).

Contractors and subcontractors that do not complete the proposed form online will gather the same information, conduct the same analyses and then manually complete the proposed report. OFCCP estimates it will take these establishments 8 hours on average to complete these tasks, including saving a copy of the report. OFCCP estimates that the burden for those establishments will be 5,408 hours (676 contractor establishments × 8 hours = 5,408 hours). OFCCP seeks public comments on the accuracy of its estimates of the amount of time contractors would spend completing and submitting the Equal Pay Report (estimates of initial capital costs from modifying computer systems are provided below).

OFCCP estimates that the combined burden hours for completing the proposed report are 406,982 hours (401,574 hours + 5,408 hours = 406,982 hours). The cost for this provision is approximately $12,643,913 ((401,574 hours × 0.25 × $51.58) + (401,574 hours × 0.75 × $24.23) + (5,408 × 0.25 × $51.58) + (5,408 × 0.75 × $24.23)) or $187 per establishment ($12,643,913/67,605 contractor establishments).

Proposed § 60–1.7(b)(2) identifies who must file an Equal Pay Report. Proposed § 60–1.7(b)(2) states that contractors who must file the EEO–1 must also file the proposed OFCCP report. Should OFCCP determine that postsecondary academic institutions are to be covered by the new requirement they would be incorporated into proposed § 60–1.7(b)(2). Therefore, there is no new burden for this provision.

Proposed § 60–1.7(b)(3) describes the procedures established for complying with the requirement to report on summary compensation data. The

[117] In determining the number of establishments, OFCCP used the 67,578 EEO–1 filers with more than 100 employees and added the 27 postsecondary educational institutions.

[118] OFCCP accounts for contractor system changes under its discussion of Initial Capital and Start-up Costs below.

NPRM does not propose specifying a particular deadline for filing the proposed report; proposed § 60–1.7(b)(3)(i) specifically states that the report must be filed by the date specified in the report. OFCCP is proposing a filing window of between January 1 and March 31 in an accompanying ICR. The proposed rule would require contractors and subcontractors to file the reports electronically. Proposed § 60–1.7(b)(3)(ii) provides that contractors must submit the Equal Pay Report electronically through OFCCP's web-based filing system by the specified filing deadline, unless a hardship exemption has been granted under subparagraph (3)(iii). Proposed § 60–1.7(b)(3)(iii) provides that the Director of OFCCP may grant a hardship exemption from the electronic filing requirement where he or she concludes that electronic filing would impose an undue hardship on the contractor. Proposed § 60–1.7(b)(3)(iii) also requires contractors and subcontractors to submit a written request for a hardship exemption and indicates that the eligibility criteria and application procedures will be available on the OFCCP Web site. OFCCP estimates that 1 percent of contractor establishments or 676 contractor establishments will request a hardship exemption to the electronic filing requirement. OFCCP estimates it will take a contractor establishment 30 minutes to prepare, write, and send the exemption request. Therefore, OFCCP estimates the burden of this provision to be 338 hours (676 contractor establishments × 0.5 hours = 338 hours). The cost for this provision is approximately $10,501 ((338 hours × 0.25 × $51.58) + (338 hours × 0.75 × $24,23)) or about $0.16 per establishment.[119] OFCCP requests comments on its estimate of the cost for preparing and submitting exemption requests.

Proposed § 60–1.7(b)(4) would apply existing agency procedures on confidentiality of records and information to the Equal Pay Report. It also provides OFCCP the ability to publish aggregate compensation data, such as pay ranges or averages, by industry, labor market or other groupings, obtained because the submission of Equal Pay Reports. This provision does not create any new burden because it is an existing provision.

Proposed § 60–1.7(e) would apply sanctions under existing § 60–1.7(a)(4) to the failure to file a complete and accurate Equal Pay Report or representation, and makes minor changes for clarity and readability. As this is an existing requirement, there is no new burden for this provision.

Proposed § 60–1.7(d) would require Federal contractors and subcontractors, that are bidders or prospective prime contractors on a new contract or subcontract, to make two representations: (1) Make a representation or provide a written statement that they are currently a contractor or subcontractor; and (2) make a representation that the contractor or subcontractor submitted the required Equal Pay Report for the prior reporting period. OFCCP recognizes that bidders and prospective prime contractors register and make their representations and certifications in the General Services Administration's System for Award Management (SAM). Thus, the representation will be an additional check box added into the SAM system. OFCCP has included this burden in its discussion of initial capital and start-up costs, below.

Proposed 1.7(c) would require contractor establishments that file the proposed Equal Pay Report to maintain their records. For example, contractors would maintain compensation data, hours worked, and demographic information in accordance with OFCCP's current recordkeeping provisions at 41 CFR 60–1.12. Section 60–1.12(a) requires contractors to preserve any personnel or employment record made or kept for a period of not less than two years. However, if the contractor has fewer than 150 employees or does not have a contract of at least $150,000, this retention period is one year. Maintaining records is an existing obligation under OFCCP regulations. Any additional burden associated with preserving copies of the Equal Pay Report is included as stated above.

TABLE 2—CONTRACTOR PROPOSED NEW REQUIREMENTS

| Estimated one-time burden | | |
|---|---|---|
| Section | Burden hours | Estimated costs |
| Regulatory Familiarization | 67,605 | $3,487,066 |
| 60–1.7(b)(1) (modify IT system(s) for the Equal Pay Report) | 637,530 | 30,104,167 |
| 60–1.7(d) (representation of compliance with this requirement) | 0 | 0 |
| Total One-Time Burden | 705,135 | 33,591,233 |
| **Estimated recurring costs** | | |
| Section | Burden hours | Costs |
| 60–1.7(b)(1) (complete compensation report) | 406,982 | $12,643,913 |
| 60–1.7(b)(2) (who must file) | 0 | 0 |
| 60–1.7(b)(3)(i) (when to file) | 0 | 0 |
| 60–1.7(b)(3)(ii) (electronic filing) | 0 | 0 |
| 60–1.7(b)(3)(iii) (electronic exemption) | 338 | 10,501 |
| 60–1.7(b)(4) (publication of aggregate compensation data) | 0 | 0 |
| 60–1.7(e) (sanctions) | 0 | 0 |
| 60–1.7(d) (representation of filing) | 0 | 0 |
| 60–1.7(d)(2) (recordkeeping requirement) | 0 | 0 |
| Operations and Maintenance | 0 | 4,542 |
| Total Recurring Burden | 407,320 | 12,654,414 |
| Total Cost of the Proposed Rule | 1,112,455 | 46,250,189 |

[119] $0.16 = ($10,501/67,605)

Note that the burden estimates for modifying IT systems is at the high end of the start-up cost range. The possible range for start-up cost is a low of $29,802,431 (assuming that 99 percent of companies make IT system changes) and an estimated high of $30,104,167 (assuming that 100 percent (or 21,251) of companies make system changes.

**Initial Capital or Start-up Costs**

*Section 60–1.7(b)(1) Equal Pay Report*

In order to estimate the start-up costs for the proposed Equal Pay Report, OFCCP considered what contractors would be required to do in order to extract required data from existing HRIS and payroll systems. Because contractors and subcontractors must already maintain information on their employees by race, ethnicity, sex and EEO–1 job category, and must already have a system to assign employees and jobs to these categories and record it; it is unnecessary to modify the existing databases to capture new information for this report. However, contractors may keep that demographic information in a database different from the one used to record payroll (W–2) and hours worked information, and may need to develop standard queries and reporting formats to extract and merge the data each year for the Equal Pay Report. In addition, contractors and subcontractors may need to write additional code or undertake other programming to summarize the data for entry into the proposed Equal Pay Report.

The minimum cost for modifying HRIS and payroll systems is based on the estimate that 99 percent of contractors utilize some type of electronic system. Based on information from IT professionals, OFCCP estimates it would take contractors on average 30 hours for an IT professional to write code, develop the queries, create a standard report that matches the employee demographic and job information to their W–2 earnings and hours worked, and summarize and enter the data totals for each job group/demographic combination in the proposed report. This includes time reviewing the rule itself and the forms and instructions, developing the requested change or work order, establishing a development schedule, confirming the scope and specifications of the work to be completed, working on specific system changes, testing the changes, resolving problems, conducting quality assurance, and implementing the final changes. The estimated costs for these modifications are based on the BLS data in the publication, ''Employer Costs for Employee Compensation'' (December 2013), which lists total compensation for professional and related occupations at a rate of $47.22 per hour. Therefore, the minimum capital and start-up costs estimated for Federal contractor companies is 631,140 hours (21,038 contractor companies × 30 hours = 631,140). We calculate the total minimum estimated start-up costs as $29,802,431 (631,140 × $47.22 per hour = $29,802,431). This represents an estimated cost of $1,417 per company ($29,802,431 start-up cost/21.038 contractor companies = $1,417). OFCCP seeks public comments on the accuracy of its estimate of the average cost of modifying HRIS and payroll systems in response to this proposed rule.

Assuming all contractor companies utilize HRIS and payroll systems and that they all have to make similar system changes, the estimated burden for modifying these systems is 637,530 (21,251 contractor companies × 30 hours = 637,530). We calculate the total costs as $30,104,167 (637,530 hours × $47.22 per hour = $30,104,167) or $1,417 per contractor company ($30,104,167/21,251 contractor companies). Assuming that all contractor companies utilize electronic HRIS and payroll systems may be an overestimation of costs because there may be some contractor companies that do not have electronic systems.

*Section 60–1.7(d)(1)(iv) Requirements for Bidders or Prospective Prime Contractors*

The General Services Administration maintains SAM, which consolidated eight Federal procurement systems and the catalog of Federal domestic assistance into one database. Companies that want to do business with the Federal government are required to register in SAM, and bidders including prime contractors are required to make representations regarding their compliance with a variety of requirements including OFCCP's current requirements. Contractors complete this representation process by responding to four questions. The contractor has only to check or mark the response in the appropriate check box. Thus, to comply with the proposed requirements, bidders and prospective prime contractors will check one additional box when registering and make their representation in SAM. OFCCP believes that there is no significant burden associated with responding to one additional question in the SAM registration process. Thus, OFCCP estimates that there is no additional burden associated with this representation.

Though OFCCP seeks comments on all aspects of its calculation of burden and costs, the agency specifically seeks comments on the burden associated with the representation process § 60–1.7(d)(1)(v), including matters related to the use of the SAM system.

TABLE 3—TOTAL INITIAL CAPITAL OR START-UP COSTS

| Section | Costs |
|---|---|
| 60–1.7(b)(1) (Equal Pay Report) | $30,104,167 |
| 60–1.7(d)(1)(v) Bidders or Prospective Contractors Representation | 0 |
| Total | $30,104,167 |

Note that the start-up cost estimate of $30,104,167 is at the high end of the start-up cost range. The possible range for start-up cost is a low of $29,802,431 (assuming that 99 percent of companies make IT system changes) and an estimated high of $30,104,167 (assuming that 100 percent (or 21,251) of companies make system changes).

**Operations and Maintenance Costs**

*Section 60–1.7(b)(1) Equal Pay Report*

OFCCP estimates that contractors will incur some operations and maintenance costs in addition to the initial capital or start-up costs calculated above. The contractor must annually report to OFCCP summary data on the compensation paid to employees by sex, race, and ethnicity within specified job categories using a web-based online filing system. OFCCP estimates that 67,605 contractor establishments will respond annually and 99 percent of them will do so electronically. Contractors using the web-based filing system will not incur copying and mailing costs. However, to account for the estimated 1 percent of contractors filing without using the web-based filing system for some reason (i.e. no access, compatibility, etc.), OFCCP is estimating their printing, copying and mailing costs. The estimated cost for printing and copying would be $216 (676 contractor establishments × 4 pages × $0.08 per page = $216). OFCCP estimates that the contractor will submit the report by registered mail and further estimates the cost to be $3,887 (676 contractor establishments × $5.75 = $3,887). The total estimated operations and maintenance cost for the Equal Pay Report is $4,103.

*Section 60–1.7(b)(3)(iii) Hardship Exemption*

OFCCP recognizes that some contractor establishments do not have automated HRIS or payroll systems or may have systems that would be incompatible with OFCCP's web-based online filing system. Contractors facing this challenge must annually request from OFCCP a hardship exemption to the electronic filing requirement. The request for exemption would be a one-page letter to the Director, OFCCP acknowledging the obligation to submit the report, explaining why the report cannot be submitted electronically and requesting exemption for that year's filing. OFCCP estimates that 1 percent of its contractor establishment universe or 676 contractor establishments will request a hardship exemption to the electronic filing requirement. Therefore, OFCCP estimates that the cost for printing and copying the one page letter would be $108 (676 contractor establishments × 2 pages × $0.08 = $108). In addition, OFCCP estimates the mailing cost would be $331 (676 contractor establishments × 1 letter × $0.49 per letter = $331). The total estimated operations and maintenance cost for the hardship exemption would be $439 ($108 + 331).

*60–1.7(d)(1)(v) Bidders or Prospective Contractors Certifications and Representations*

The expectation is that bidders and prospective prime contractors will include in their bid proposals the modified language indicating whether the bidder or prospective prime contractor filed the proposed Equal Pay Report for the most recent reporting period. This provision is a small part of a larger bid proposal sent to contracting agencies. Therefore, OFCCP does not assume any of the printing, copying or mailing costs associated with this provision.

TABLE 4—TOTAL OPERATIONS AND MAINTENANCE COSTS

| Section | Costs |
|---|---|
| 60–1.7(b)(1) Equal Pay Report (copying and mailing) | $4,103 |
| 60–1.7(b)(3)(iii) Hardship Exemption (copying and mailing) | 439 |
| 60–1.7(d)(1)(v) Bidders or Prospective Prime Contractors Representation | 0 |
| Total | 4,542 |

*Cost Estimates for Government*

OFCCP estimates that implementing the proposed Equal Pay Report will increase the costs related to staffing and improving current case management and information systems. In terms of staffing, OFCCP anticipates hiring four full-time positions at its national office. These staff members will be involved in providing technical assistance to contractors completing the forms, managing the content of the online portal, reviewing exemption requests, and analyzing data. OFCCP estimates the staffing costs to be $359,696.[120]

Additionally, as a part of an ongoing effort by DOL to enhance services provided to Federal contractors, OFCCP anticipates that it will be upgrading its existing IT system, including its case management system and support for the Web-based features for the online submission of the Equal Pay Report. OFCCP anticipates that these upgrades will cost $3.4 million. Therefore, OFCCP estimates the cost to the Federal Government to be $3.8 million.

| Item | Estimated cost |
|---|---|
| Additional Staffing | $359,696 |
| Updating Information Systems | 3,400,000 |
| Total | 3,759,696 |

*Transfer Payments to Workers Who Have Experienced Pay Discrimination*

There are two ways in which this rule could have transfer effects: (1) The rule allows OFCCP to find more violations and recover payments for the violators' employees, and (2) contractors voluntarily increase transfers to certain employees, potentially to reduce their probability of being subject to a compliance evaluation or enforcement action by OFCCP. This includes, for example, changes in behavior during compliance monitoring that may be put into place as a part of the remedy for violations found through enforcement actions.

In order to develop an estimate of transfers that may result from this proposed rule, OFCCP notes that approximately 4,000 Federal contractor establishments, of a total of 500,000 (or 1 in 125 establishments) are audited each year. OFCCP anticipates that it will conduct approximately the same number of audits under this rule as it has in the past. In 2013, OFCCP recovered approximately $1.2 million for 965 workers. Estimating the amount of rule-induced future recoveries using only the 2013 data is problematic for several reasons. First, these calculations would be based on only one year's set of data and, as such, appear unreliable for establishing future projections. Also, collecting sufficient historical data could be challenging because monetary recoveries were not always calculated and reported using the same methodology. To address this challenge, the agency is refining and standardizing its data collection and reporting, including information on recoveries. Second, the recovery number is based on compliance evaluations conducted using a scheduling process that did not include prioritization to increase the likelihood of identifying violators and violations. This process was neither highly effective nor efficient. The use of the Equal Pay Report to set objective industry standards against which contractors' pay practices can be compared to determine the likelihood that a violation exists may increase monetary recoveries. However, these recoveries could be reduced, in part, by the potential for contractors to voluntarily increase the amount of transfers to certain employees. It could be further off-set by contractors who cease discriminatory practices as a part of participating in compliance monitoring or other activities related to remedying violations found during an OFCCP enforcement action.

OFCCP does not currently have sufficient information to reliably estimate the potential transfer payments from this rule, and requests public comment on data and methods to do so. Rule-induced transfers from OFCCP enforcement actions or voluntary actions by contractors most likely represent a transfer of value to underpaid employees from employers (e.g., if additional wages are paid out of profits) or taxpayers (if contractor fees increase due to the need to pay higher wages to employees) or other employees.

*Analysis of Rulemaking Alternatives*

OFCCP considered a range of regulatory alternatives that would better enable the agency to encourage greater voluntary compliance and effectively enforce its laws prohibiting compensation discrimination. In addition to the approach proposed in the NPRM, OFCCP considered two alternative approaches. First, OFCCP considered requiring contractors to submit individual compensation data for each employee and factors that

[120] OFCCP anticipates filing these positions in its headquarters office at the GS–13 salary level. This salary estimate is based on the Office of Personnel Management's salary range for a GS–13, Step 1 position located in the Washington-Baltimore-Northern Virginia area in 2014; the estimate includes locality pay.

explain compensation for each employee. Second, OFCCP considered relying solely on the current regulations with no changes. Each of these alternatives is discussed in further detail below. OFCCP seeks comments from stakeholders on the analysis of the proposal in the NPRM, as well as each alternative and variation, including OFCCP's assessment of the cost and benefits.

*Alternative 1—Collecting Individual Compensation Data*

OFCCP also considered collecting individual compensation data. Collecting individual compensation data would provide clearer information about potentially discriminatory compensation practices, both systemic and individualized. This would lead to a better-informed assessment of contractors' compliance with Executive Order 11246.

OFCCP ultimately determined that it would be burdensome and costly to require contractors to submit individual compensation data. Selecting aggregate data would permit easy analysis of comparability data across contractors. It would also allow OFCCP to devote the time to conduct a more detailed analysis where it is more likely to matter. Collecting aggregate data would also avoid many potential privacy or other concerns about protecting confidential employee salary data.

*Alternative 2—Prioritization Models Relying Solely on Existing Compliance Evaluation Data*

OFCCP also considered the alternative of developing a database for scheduling based on the individual compensation data the agency has collected from a number of Federal contractors over the last several years during regular compliance evaluations. When the agency schedules contractors for review, it requests preliminary summary data on compensation, in the form of average pay by sex and race within case-specific groupings determined by the contractor. Based on the initial analysis of this summary data, OFCCP can then request individual data showing the compensation paid to each worker, their demographics, and data on factors such as tenure or performance ratings.

The benefits of this approach are reduced burden and potential additional precision in assessing the reasons for contractor disparities. Because the alternative relies on existing data, it imposes no new data collection burden. Further, these individual data files are more comprehensive than the summary data in the Equal Pay Report, because they include individual pay records and factors. This would allow the agency to conduct more statistical tests and perform a more nuanced assessment of potential explanations for pay disparities. The agency could attempt to use this information, along with violation history, to determine what a ''profile'' of a potential violator looks like. OFCCP would then attempt to prioritize similar firms for a compliance evaluation.

However, there are a host of both practical and technical problems with this alternative. In the first place, once OFCCP determined the size and type of pay differences that may be linked to a potential violation, it would have to use data other than compensation to build the ''profile.'' Because there is no existing source of data on compensation by demographics for specific contractors, OFCCP could not select contractors with similar pay practices for review. Instead, the agency would have to use indirect markers such as industry, employer size, or basic EEO–1 demographics to make selections. This increases the likelihood of selecting contractors whose pay practices are actually in compliance.

Further, the agency requests individual data on a subset of the approximately 4,000 cases it schedules for review each year; these data are not necessarily representative of all contractors. This means the profile would be based on a highly limited and potentially biased sample of contractor pay data. The number of available records may vary widely by industry, geographic location, employer size or type of job. This means OFCCP could not use these data to develop comprehensive and objective measures of the contractor pay gap by industry.

Finally, this approach is not consistent with the Presidential Memorandum. The Memorandum directs the agency to collect new summary data that would increase the efficiency and effectiveness of its enforcement and support voluntary compliance. Using existing data is not a new data collection, it is less likely than the Equal Pay Report to improve the agency's ability to focus on potential violators, and it would not allow OFCCP to calculate the objective industry measures to support deterrence and voluntary compliance.

Moreover, OFCCP believes the current regulations have negative effects as well. For example, the current regulations do not provide OFCCP a systematic means for evaluating contractors with the greatest potential to be violating anti-pay discrimination laws. Therefore, under the current regulations, OFCCP is as likely to conduct compliance evaluations of contractors with no leading indicators showing potential for violating anti-pay discrimination laws as it is of contractors whose summary compensation data show a greater potential for violating such laws. The current regulations, therefore, impose compliance review costs on compliant contractors and subcontractors.

*Regulatory Flexibility Act/Initial Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business organizations and governmental jurisdictions subject to regulation.'' Public Law 96–354. To achieve that principle, the Act requires agencies promulgating proposed rules to prepare an initial regulatory flexibility analysis (IRFA) and to develop alternatives whenever possible, when drafting regulations that will have a significant impact on a substantial number of small entities. The Act requires the consideration for the impact of a proposed regulation on a wide-range of small entities including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposal or final rule would have a significant economic impact on a substantial number of small entities.[121] If the determination is that it would, then the agency must prepare a regulatory flexibility analysis as described in the RFA.[122]

However if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. See 5 U.S.C. 605. The certification must include a clear statement providing the factual basis and reasoning for this determination.

OFCCP designed its initial regulatory flexibility analysis to aid stakeholders in understanding the small entity impacts of the proposed rule and to obtain additional information on the small entity impacts. OFCCP seeks comments on the following estimates, including the number of small entities affected by the NPRM, the compliance cost estimates, and whether alternatives exist

[121] *See* 5 U.S.C. 603.

[122] *Id.*

that will reduce burden on small entities while still remaining consistent with the objective of the Presidential Memorandum.

*Why OFCCP Is Considering Action*

OFCCP is publishing this proposed regulation to implement the requirements of the April 8, 2014 Presidential Memorandum, ''Advancing Pay Equality Through Compensation Data Collection.'' The Presidential Memorandum directs the Secretary of Labor to develop a rule that requires Federal contractors and subcontractors to submit summary data on the compensation paid to employees.

*Objectives of and Legal Basis for Rule*

This proposed rule will provide guidance on the type of data covered Federal contractors and subcontractors are required to provide and specific information on providing the data. As discussed in the preamble, Section 202 of Executive Order 11246 requires Federal contractors to agree to comply with all provisions of the Executive Order and the rules, regulations, and relevant orders of the Secretary of Labor. Section 203 of Executive Order 11246 grants the Secretary of Labor broad authority to require compliance reports from contractors and subcontractors.

*Compliance Requirements of the Proposed Rule, Including Reporting and Recordkeeping*

As explained in this proposed rule, the purpose of this NPRM is to amend the regulations implementing Executive Order 11246 to add a requirement that Federal contractors and subcontractors report annually summary information on the compensation paid to employees by sex, race, ethnicity, and specified job categories. The requirements in Executive Order 11246 generally apply to any business or organization that (1) holds a single Federal contract, subcontract, or Federally assisted construction contract in excess of $10,000; (2) has Federal contracts or subcontracts that have a combined total in excess of $10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount.

This NPRM contains provisions that if adopted could impose compliance requirements on contractors. The general requirements with which contractors must comply are set forth in 41 CFR 60–1.7. Annually, covered Federal contractors must electronically submit an Equal Pay Report to OFCCP. Contractors who are unable to submit the report electronically may ask for an exemption in order to submit the report in another approved format. OFCCP's proposed new requirements cover prime contractors and first tier subcontractors that are required to file an EEO–1 Report, have more than 100 employees, and a contract, subcontract, or purchase order amounting to $50,000 or more. Such compliance requirements are fully described above in other portions of this preamble. The following section analyzes the cost of complying with this NPRM.

*Calculating Impact of the Proposed Rule on Small Business Firms*

OFCCP must determine the compliance cost of this proposed rule on small contractor firms, and whether these costs will be significant for a substantial number of small contractor firms (i.e., small business firms that enter into contracts with the Federal Government), and whether these costs will be significant for a substantial number of small contractor firms. If the estimated compliance costs for affected small contractor firms are less than three percent of small contractor firms' revenues, OFCCP considers it appropriate to conclude that this proposed rule will not have a significant economic impact on the small contractor firms. OFCCP has chosen three percent as its significance criterion. However, using this benchmark as an indicator of significant impact may overstate the impact of this proposed rule because the costs associated with efficient enforcement of the prohibitions against compensation discrimination are expected to be mitigated by societal benefits. These benefits include supporting working women and strengthening working families but are difficult to quantify; the benefits are discussed more fully in the preamble of this NPRM.

The data sources used in the analysis of small business impact are the Small Business Administration's (SBA) Table of Small Business Size Standards [123] and the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB).[124] Since Federal contractors are not limited to specific industries, OFCCP assessed the impact of this NPRM across 19 NAICS codes.[125] Because data limitations do not allow OFCCP to determine which of the Federal contractors within these industries are small firms, OFCCP assumes that these small firms are not significantly different from the small Federal contractors that they will be directly affected by the proposed rule.

OFCCP used the following steps to estimate the cost of the proposed rule per small contractor firm as measured by a percentage of the total annual receipts. First, OFCCP used Census SUSB data that disaggregates industry information by firm size in order to perform a robust analysis of the impact on small contractor firms. OFCCP applied the SBA small business size standards to the SUSB data to determine the number of small firms in the affected industries. Then OFCCP used receipts data from the SUSB to calculate the cost per firm as a percent of total receipts by dividing the estimated annual cost per firm by the average annual receipts per firm. OFCCP applies this methodology to each of the industries and displays the results in the summary tables below (*see Tables 5–23).*

In the NAICS industry groupings of mining (NAICS code 21), utilities (NAICS code 22), Manufacturing (NAICS codes 31–33), and Wholesale Trade (NAICS code 42), the increase in the cost of compliance resulting from the NPRM is *de minimis* relative to revenue at small contractor firms in these industries no matter their size. All of these industries had an annual cost per firm as a percent of receipts of 3.0 percent or less. For instance, the manufacturing industry cost is estimated to range from 0.0 percent for firms that have average annual receipts of approximately $985 million to 0.54 percent for firms that have average annual receipts of under $403,338. In the NAICS industry groupings of Agriculture, Forestry, Fishing, and Hunting Industry (NAICS code 11), Construction (NAICS code 23), Retail Trade (NAICS codes 44–45), Transportation and Warehousing (NAICS codes 48–49), Information (NAICS code 51), Finance and Insurance (NAICS code 52), Real Estate and Rental and Leasing (NAICS code 53),

[123] United States Small Business Administration, Firm Size Data, *http://www.sba.gov/advocacy/849/12162#susb,* (last accessed June 9, 2014).

[124] United States Census Bureau, Latest SUSB Annual Data, *http://www.census.gov/econ/susb/* (last accessed June 9, 2014).

[125] Agriculture, Forestry, Fishing, and Hunting Industry (North American Industry Classification System (NAICS) 11, Mining NAICS 21, Utilities NAICS 22, Construction NAICS 23, Manufacturing, NAICS 31–33, Wholesale Trade NAICS 42, Retail Trade NAICS 44–45, Transportation and Warehousing NAICS 48–49, Information NAICS 51, Finance and Insurance NAICS 52, Real Estate and Rental and Leasing NAICS 53, Professional, Scientific, and Technical Services NAICS 54, Management of Companies and Enterprises NAICS 55, Administrative and Support and Waste Management and Remediation Services NAICS 56, Educational Services NAICS 61, Healthcare and Social Assistance NAICS 62, Arts, Entertainment, and Recreation NAICS 71, Accommodation and Food Services NAICS 72, Other Services NAICS 81.

Professional, Scientific, and Technical Services (NAICS code 54), Management of Companies and Enterprises (NAICS code 55), Administrative and Support and Waste Management and Remediation Services (NAICS code 56), Educational Services (NAICS code 61), Healthcare and Social Assistance (NAICS code 62), Arts, Entertainment, and Recreation (NAICS code 71), Accommodation and Food Services (NAICS code 72), and Other Services(NAICS code 81) the increase in the cost of compliance resulting from the NPRM is *de minimis* in all but the smallest of size categories when compared to the average annual revenue. Examining the areas where the impact of cost is above 3 percent, OFCCP determined that those contractor companies or firms do not meet the requirement for filing EEO–1 reports because on average these small firms do not have 50 or more employees. For example, OFCCP estimates the industry cost for the arts, entertainment, and recreation industry at 4.6 percent for firms that have average annual receipts of $47,301. Looking at the data, these same small firms have an average of 1.6 employees. Thus, these firms would not be subject to the requirements of 41 CFR 60–1.7(a) to file an EEO–1 Report because they do not have 50 or more employees. Based on OFCCP's analysis,, those firms that are impacted are not among those expected to submit the Equal Pay Report because they do not meet the threshold requirement for completing an EEO–1 Report. This is so even though the increase in the cost of compliance resulting from this NPRM appears to have an impact on the smallest of firms in 15 of the 19 NAICS industry groups. OFCCP seeks data and feedback from small firms on the factors and assumptions used in this analysis, such as the data sources, small business industries, NAICS codes and size standards, and the annual costs per firm as a percent of receipts. OFCCP seeks information on which data sources it could use to estimate the number of small Federal subcontractors. OFCCP also seeks information about the potential compliance cost estimates, such as any differences in compliance costs for small businesses as compared to larger businesses and any compliance costs that may not have been included in this analysis.

*Estimating the Number of Small Businesses Affected by the Rulemaking*

OFCCP now sets forth its estimate of the number of small contractor firms actually affected by the proposed rule. OFCCP determined the number of small regulated entities that would be subject to this NPRM by using the FY 2012 EEO–1 data and the identified universe of IPEDS filers within OFCCP's jurisdiction. Of the 21,251 contractor firms that would be required to file the proposed report, OFCCP estimates that 20,232 employ between 101 and 500 employees. Thus, OFCCP estimates that the number of small contractor firms affected by this regulation is 20,232. OFCCP believes that this NPRM will not have a significant economic effect on a substantial number of small businesses affected. OFCCP invites the public to provide information related to this data limitation, and any data on small contractors.

*Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Rule*

OFCCP is not aware of any relevant Federal rules that conflict with this NPRM.

*Alternatives to the Proposed Rule*

As described above, OFCCP is requesting input on a number of alternatives regarding the collection and submission of the compensation information.

*Differing Compliance and Reporting Requirements for Small Entities*

This NPRM applies to Federal contractors with more than 100 employees, a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications, and that file an EEO–1 Report. Contractor companies that do not have more than 100 employees are not required to comply with this NPRM.

*Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities*

OFCCP drafted this NPRM to state in a clear way the compliance requirements for all contractors subject to this proposed regulation. The recordkeeping and reporting requirements imposed by this proposed rule are necessary for OFCCP to determine contractor compliance with Executive Order 11246 in the area of compensation practices.

*Use of Performance Rather Than Design Standards*

OFCCP drafted this NPRM to ensure compliance with the Equal Pay Report requirements by providing clear guidelines. Under the proposed rule, contractors may achieve compliance through a variety of means. OFCCP makes available a variety of resources to contractors for understanding their obligations and achieving compliance.

*Exemption From Coverage of the Rule for Small Entities*

Small contractor companies that do not meet the threshold of more than 100 employees and a contract, subcontract, or purchase order amounting to $50,000 or more are exempt from this requirement.

*Cost per Firm as a Percent of Total Receipts*

See the industry charts below.

Table 5: Cost per small firm in the agriculture, forestry, fishing, and hunting industry:

| Table 5: Agriculture, Forestry, Fishing, and Hunting Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm[1] | Annual Cost per Firm[2] | Annual Receipts | Average Receipts per Firm[3] | Annual Cost per Firm as Percent of Receipts[4] |
| Firms with sales/receipts/revenue below $100,000 | 5,086 | N/A | N/A | $2,176 | $247,056,000 | $48,576 | 4.48% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 8,939 | 21,523 | 2.4 | $2,176 | $2,231,355,000 | $249,620 | 0.87% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 3,670 | 19,631 | 5.3 | $2,176 | $2,620,344,000 | $713,990 | 0.30% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 3,230 | 30,944 | 9.6 | $2,176 | $4,975,078,000 | $1,540,272 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 1,117 | 20,049 | 17.9 | $2,176 | $3,811,000,000 | $3,411,817 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 289 | 8,997 | 31.1 | $2,176 | $1,730,128,000 | $5,986,602 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 165 | 7,588 | 46.0 | $2,176 | $1,340,763,000 | $8,125,836 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 112 | 6,130 | 54.7 | $2,176 | $1,288,588,000 | $11,505,250 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 55 | 4,042 | 73.5 | $2,176 | $874,841,000 | $15,906,200 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 44 | 5,325 | 121.0 | $2,176 | $858,761,000 | $19,517,295 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 26 | 2,800 | 107.7 | $2,176 | $595,387,000 | $22,899,500 | 0.01% |

N/A = not available, not disclosed

[1] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average number of employees per firm (2.4) was derived by dividing the total number of employees (21,523) by the number of firms (8,939).

[2] The annual cost per firm ($2,176) accounts for regulatory familiarization and the costs of making changes to computer systems ($1,670), as well as the costs of filing a report or requesting an exemption ($919).

[3] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average receipts per firm ($249,620) was derived by dividing the total annual receipts ($2,231,355,000) by the number of firms (8,939).

[4] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the annual cost per firm as a percent of receipts (1.04 percent) was derived by dividing the annual cost per firm ($2,176) by the average receipts per firm ($249,620).

Table 6: Cost per small firm in the mining industry:

| Table 6: Mining Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm[1] | Annual Cost per Firm [2] | Annual Receipts | Average Receipts per Firm [3] | Annual Cost per Firm as Percent of Receipts [4] |
| Firms with 0-4 employees | 11,223 | 17,874 | 1.6 | $2,176 | $6,809,517,000 | $606,747 | 0.36% |
| Firms with 5-9 employees | 3,186 | 21,314 | 6.7 | $2,176 | $6,304,810,000 | $1,978,911 | 0.11% |
| Firms with 10-19 employees | 2,451 | 33,344 | 13.6 | $2,176 | $9,092,457,000 | $3,709,693 | 0.06% |
| Firms with 20-99 employees | 2,775 | 107,447 | 38.7 | $2,176 | $32,035,288,000 | $11,544,248 | 0.02% |
| Firms with 100-499 employees | 690 | 102,299 | 148.3 | $2,176 | $38,463,690,000 | $55,744,478 | 0.00% |

[1] In the case of mining firms with 0-4 employees, the average number of employees per firm (1.6) was derived by dividing the total number of employees (17,874) by the number of firms (11,223).

[2] The annual cost per firm ($2,176) accounts for regulatory familiarization and the costs of making changes to computer systems ($1,670), as well as the costs of filing a report or requesting an exemption ($919).

[3] In the case of mining firms with 0-4 employees, the average receipts per firm ($606,747) was derived by dividing the total annual receipts ($6,809,517,000) by the number of firms (11,223).

[4] In the case of mining firms with 0-4 employees, the annual cost per firm as a percent of receipts (0.43 percent) was derived by dividing the annual cost per firm ($2,176) by the average receipts per firm ($606,747).

Table 7: Cost per small firm in the utilities industry:

| Table 7: Utilities Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with 0-4 employees | 3,212 | 6,181 | 1.9 | $2,176 | $7,238,519,000 | $2,253,586 | 0.10% |
| Firms with 5-9 employees | 1,020 | 6,546 | 6.4 | $2,176 | $4,373,888,000 | $4,288,125 | 0.05% |
| Firms with 10-19 employees | 513 | 6,722 | 13.1 | $2,176 | $5,657,251,000 | $11,027,780 | 0.02% |
| Firms with 20-99 employees | 870 | 38,602 | 44.4 | $2,176 | $27,513,924,000 | $31,625,200 | 0.01% |
| Firms with 100-499 employees | 309 | 52,294 | 169.2 | $2,176 | $53,091,123,000 | $171,815,932 | 0.00% |
| Firms with 500+ employees[1] | 199 | 512,412 | 2,574.9 | $2,176 | $475,894,489,000 | $2,391,429,593 | 0.00% |

[1] The small business size standard for several subsectors within the utilities industry is 750 or 1,000 employees; however, data are not disaggregated for firms with more than 500 employees.

Table 8: Cost per small firm in the construction industry:

| Table 8: Construction Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 151,986 | N/A | N/A | $2,176 | $7,636,718,000 | $50,246 | 4.33% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 316,475 | 776,806 | 2.5 | $2,176 | $81,110,428,000 | $256,293 | 0.85% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 124,214 | 642,823 | 5.2 | $2,176 | $88,028,843,000 | $708,687 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 110,546 | 1,049,670 | 9.5 | $2,176 | $173,054,634,000 | $1,565,454 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 47,962 | 864,701 | 18.0 | $2,176 | $167,758,626,000 | $3,497,740 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 16,992 | 492,370 | 29.0 | $2,176 | $102,502,053,000 | $6,032,371 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 7,801 | 308,512 | 39.5 | $2,176 | $66,977,650,000 | $8,585,777 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 8,259 | 427,159 | 51.7 | $2,176 | $99,174,146,000 | $12,008,009 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 4,354 | 289,441 | 66.5 | $2,176 | $73,881,089,000 | $16,968,555 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 2,611 | 209,081 | 80.1 | $2,176 | $56,928,754,000 | $21,803,429 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 1,621 | 150,754 | 93.0 | $2,176 | $43,119,720,000 | $26,600,691 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 1,171 | 121,928 | 104.1 | $2,176 | $36,848,837,000 | $31,467,837 | 0.01% |
| N/A = not available, not disclosed | | | | | | | |

Table 9: Cost per small firm in the manufacturing industry:

| Table 9: Manufacturing Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with 0-4 employees | 114,635 | 213,123 | 1.9 | $2,176 | $46,236,636,000 | $403,338 | 0.54% |
| Firms with 5-9 employees | 53,500 | 358,110 | 6.7 | $2,176 | $53,036,608,000 | $991,338 | 0.22% |
| Firms with 10-19 employees | 44,939 | 612,113 | 13.6 | $2,176 | $97,897,887,000 | $2,178,462 | 0.10% |
| Firms with 20-99 employees | 55,603 | 2,288,585 | 41.2 | $2,176 | $440,739,564,000 | $7,926,543 | 0.03% |
| Firms with 100-499 employees | 13,945 | 2,445,779 | 175.4 | $2,176 | $634,737,830,000 | $45,517,234 | 0.00% |
| Firms with 500+ employees[1] | 4,079 | 7,402,462 | 1,814.8 | $2,176 | $4,019,587,050,000 | $985,434,432 | 0.00% |
| [1] The small business size standard for many subsectors within the manufacturing industry is 750, 1,000, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees. | | | | | | | |

Table 10: Cost per small firm in the wholesale trade industry:

| Table 10: Wholesale Trade Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with 0-4 employees | 190,153 | 325,412 | 1.7 | $2,176 | $297,267,502,000 | $1,563,307 | 0.14% |
| Firms with 5-9 employees | 57,366 | 377,841 | 6.6 | $2,176 | $249,842,292,000 | $4,355,233 | 0.05% |
| Firms with 10-19 employees | 39,354 | 525,216 | 13.3 | $2,176 | $325,243,478,000 | $8,264,560 | 0.03% |
| Firms with 20-99 employees | 36,783 | 1,365,914 | 37.1 | $2,176 | $899,443,843,000 | $24,452,705 | 0.01% |

Table 11: Cost per small firm in the retail trade industry:

| Table 11: Retail Trade Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 98,659 | N/A | N/A | $2,176 | $5,008,702,000 | $50,768 | 4.29% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 251,705 | 727,585 | 2.9 | $2,176 | $67,380,242,000 | $267,695 | 0.81% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 122,575 | 634,006 | 5.2 | $2,176 | $87,491,736,000 | $713,781 | 0.30% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 120,985 | 1,019,672 | 8.4 | $2,176 | $190,373,341,000 | $1,573,528 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 55,634 | 774,581 | 13.9 | $2,176 | $193,186,239,000 | $3,472,449 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 19,594 | 418,263 | 21.3 | $2,176 | $117,223,823,000 | $5,982,639 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 9,582 | 272,697 | 28.5 | $2,176 | $80,790,141,000 | $8,431,449 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 9,824 | 366,889 | 37.3 | $2,176 | $115,236,313,000 | $11,730,081 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 5,310 | 256,826 | 48.4 | $2,176 | $86,999,536,000 | $16,384,093 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 3,498 | 201,289 | 57.5 | $2,176 | $72,964,681,000 | $20,858,971 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 2,438 | 167,596 | 68.7 | $2,176 | $61,987,531,000 | $25,425,566 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 1,835 | 144,987 | 79.0 | $2,176 | $55,162,317,000 | $30,061,208 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 1,491 | 122,188 | 82.0 | $2,176 | $50,711,404,000 | $34,011,673 | 0.01% |
| N/A = not available, not disclosed | | | | | | | |

Table 12: Cost per small firm in the transportation and warehousing industry:

| Table 12: Transportation and Warehousing Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 40,510 | N/A | N/A | $2,176 | $1,939,749,000 | $47,883 | 4.54% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 67,987 | 181,924 | 2.7 | $2,176 | $16,284,066,000 | $239,517 | 0.91% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 22,377 | 151,019 | 6.7 | $2,176 | $15,756,895,000 | $704,156 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 20,915 | 271,012 | 13.0 | $2,176 | $32,305,484,000 | $1,544,608 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 9,183 | 223,156 | 24.3 | $2,176 | $31,359,227,000 | $3,414,922 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 3,550 | 136,436 | 38.4 | $2,176 | $20,463,648,000 | $5,764,408 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 1,800 | 91,408 | 50.8 | $2,176 | $14,261,554,000 | $7,923,086 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 1,840 | 123,966 | 67.4 | $2,176 | $19,933,921,000 | $10,833,653 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 988 | 85,367 | 86.4 | $2,176 | $14,057,603,000 | $14,228,343 | 0.02% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 621 | 68,836 | 110.8 | $2,176 | $11,060,118,000 | $17,810,174 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 429 | 51,989 | 121.2 | $2,176 | $8,257,805,000 | $19,248,963 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 311 | 45,274 | 145.6 | $2,176 | $7,184,425,000 | $23,101,045 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 235 | 32,922 | 140.1 | $2,176 | $5,902,588,000 | $25,117,396 | 0.01% |
| N/A = not available, not disclosed | | | | | | | |

Table 13: Cost per small firm in the information industry:

| Table 13: Information Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 15,960 | N/A | N/A | $2,176 | $767,642,000 | $48,098 | 4.52% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 27,678 | 80,336 | 2.9 | $2,176 | $6,876,130,000 | $248,433 | 0.88% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 10,311 | 67,954 | 6.6 | $2,176 | $7,260,927,000 | $704,192 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 9,808 | 120,499 | 12.3 | $2,176 | $15,248,992,000 | $1,554,750 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 4,508 | 100,331 | 22.3 | $2,176 | $15,472,313,000 | $3,432,190 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 1,837 | 65,601 | 35.7 | $2,176 | $10,856,893,000 | $5,910,121 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 1,018 | 46,846 | 46.0 | $2,176 | $8,447,070,000 | $8,297,711 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 1,092 | 68,058 | 62.3 | $2,176 | $12,300,328,000 | $11,264,037 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 601 | 49,812 | 82.9 | $2,176 | $9,293,544,000 | $15,463,468 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 389 | 37,522 | 96.5 | $2,176 | $7,616,666,000 | $19,580,118 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 270 | 30,523 | 113.0 | $2,176 | $6,512,265,000 | $24,119,500 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 175 | 25,649 | 146.6 | $2,176 | $4,971,718,000 | $28,409,817 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 136 | 21,553 | 158.5 | $2,176 | $4,082,897,000 | $30,021,301 | 0.01% |
| N/A = not available, not disclosed | | | | | | | |

Table 14: Cost per small firm in the finance and insurance industry:

| Table 14: Finance and Insurance Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 61,548 | N/A | N/A | $2,176 | $2,931,522,000 | $47,630 | 4.57% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 118,169 | 308,539 | 2.6 | $2,176 | $29,379,598,000 | $248,624 | 0.88% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 33,703 | 177,822 | 5.3 | $2,176 | $23,302,679,000 | $691,413 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 23,023 | 222,822 | 9.7 | $2,176 | $35,135,972,000 | $1,526,125 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 9,728 | 185,783 | 19.1 | $2,176 | $33,574,070,000 | $3,451,282 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 4,108 | 118,100 | 28.7 | $2,176 | $24,483,200,000 | $5,959,883 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 2,405 | 90,442 | 37.6 | $2,176 | $20,088,983,000 | $8,353,007 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 2,820 | 148,252 | 52.6 | $2,176 | $33,267,079,000 | $11,796,837 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 1,564 | 106,896 | 68.3 | $2,176 | $25,663,650,000 | $16,408,983 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 1,028 | 87,611 | 85.2 | $2,176 | $21,843,640,000 | $21,248,677 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 685 | 65,621 | 95.8 | $2,176 | $17,478,694,000 | $25,516,342 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 515 | 58,481 | 113.6 | $2,176 | $15,619,023,000 | $30,328,200 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 418 | 51,263 | 122.6 | $2,176 | $14,150,222,000 | $33,852,206 | 0.01% |
| N/A = not available, not disclosed | | | | | | | |

Table 15: Cost per small firm in the real estate and rental and leasing industry:

| Table 15: Real Estate and Rental and Leasing Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 86,219 | N/A | N/A | $2,176 | $4,165,673,000 | $48,315 | 4.50% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 124,930 | 299,041 | 2.4 | $2,176 | $30,501,166,000 | $244,146 | 0.89% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 39,747 | 191,958 | 4.8 | $2,176 | $27,836,936,000 | $700,353 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 29,717 | 269,366 | 9.1 | $2,176 | $45,164,417,000 | $1,519,818 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 10,013 | 181,600 | 18.1 | $2,176 | $33,652,743,000 | $3,360,905 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 3,288 | 95,418 | 29.0 | $2,176 | $18,788,566,000 | $5,714,284 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 1,553 | 62,482 | 40.2 | $2,176 | $12,221,244,000 | $7,869,442 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 1,518 | 81,675 | 53.8 | $2,176 | $16,329,830,000 | $10,757,464 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 771 | 48,442 | 62.8 | $2,176 | $11,037,708,000 | $14,316,093 | 0.02% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 464 | 36,318 | 78.3 | $2,176 | $8,012,159,000 | $17,267,584 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 365 | 32,555 | 89.2 | $2,176 | $7,621,190,000 | $20,879,973 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 228 | 25,638 | 112.4 | $2,176 | $5,610,499,000 | $24,607,452 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 161 | 17,743 | 110.2 | $2,176 | $4,144,542,000 | $25,742,497 | 0.01% |
| N/A = not available, not disclosed | | | | | | | |

Table 16: Cost per small firm in the professional, scientific, and technical services industry:

| Table 16: Professional, Scientific and Technical Services Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 207,967 | N/A | N/A | $2,176 | $9,968,674,000 | $47,934 | 4.54% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 339,834 | 814,116 | 2.4 | $2,176 | $82,241,004,000 | $242,003 | 0.90% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 102,144 | 584,473 | 5.7 | $2,176 | $71,850,790,000 | $703,426 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 78,520 | 870,369 | 11.1 | $2,176 | $120,442,007,000 | $1,533,902 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 28,337 | 631,182 | 22.3 | $2,176 | $97,339,397,000 | $3,435,064 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 9,714 | 355,210 | 36.6 | $2,176 | $57,721,674,000 | $5,942,112 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 4,863 | 245,206 | 50.4 | $2,176 | $40,592,738,000 | $8,347,263 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 4,658 | 313,530 | 67.3 | $2,176 | $53,578,044,000 | $11,502,371 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 2,338 | 211,940 | 90.7 | $2,176 | $36,728,134,000 | $15,709,210 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 1,381 | 147,737 | 107.0 | $2,176 | $27,448,191,000 | $19,875,591 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 954 | 122,039 | 127.9 | $2,176 | $22,622,723,000 | $23,713,546 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 603 | 91,258 | 151.3 | $2,176 | $15,961,413,000 | $26,470,005 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 511 | 83,414 | 163.2 | $2,176 | $15,941,272,000 | $31,196,227 | 0.01% |
| N/A = not available, not disclosed | | | | | | | |

Table 17: Cost per small firm in the management of companies and enterprises industry:

| Table 17: Management of Companies and Enterprises Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 1,895 | 11,318 | 6.0 | $2,176 | $44,606,000 | $23,539 | 9.24% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 1,387 | 4,529 | 3.3 | $2,176 | $293,971,000 | $211,947 | 1.03% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 964 | 5,082 | 5.3 | $2,176 | $373,917,000 | $387,881 | 0.56% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 2,039 | 18,829 | 9.2 | $2,176 | $1,087,692,000 | $533,444 | 0.41% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 2,242 | 26,723 | 11.9 | $2,176 | $1,698,014,000 | $757,366 | 0.29% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 1,717 | 28,312 | 16.5 | $2,176 | $1,855,703,000 | $1,080,782 | 0.20% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 1,258 | 22,469 | 17.9 | $2,176 | $1,711,464,000 | $1,360,464 | 0.16% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 1,942 | 41,651 | 21.4 | $2,176 | $3,120,558,000 | $1,606,878 | 0.14% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 1,423 | 34,363 | 24.1 | $2,176 | $2,997,064,000 | $2,106,159 | 0.10% |

Table 18: Cost per small firm in the administrative and support and waste management and remediation services industry

| Table 18: Administrative and Support, Waste Management and Remediation Services Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 99,021 | 139,832 | 1.4 | $2,176 | $4,500,981,000 | $45,455 | 4.79% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 129,948 | 513,457 | 4.0 | $2,176 | $31,661,803,000 | $243,650 | 0.89% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 40,405 | 409,563 | 10.1 | $2,176 | $28,444,220,000 | $703,978 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 31,127 | 725,649 | 23.3 | $2,176 | $47,963,623,000 | $1,540,901 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 12,294 | 678,340 | 55.2 | $2,176 | $42,093,718,000 | $3,423,924 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 4,589 | 434,622 | 94.7 | $2,176 | $26,428,877,000 | $5,759,180 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 2,411 | 311,321 | 129.1 | $2,176 | $19,304,673,000 | $8,006,915 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 2,309 | 424,912 | 184.0 | $2,176 | $24,412,659,000 | $10,572,828 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 1,266 | 292,501 | 231.0 | $2,176 | $17,408,483,000 | $13,750,776 | 0.02% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 724 | 208,939 | 288.6 | $2,176 | $12,542,375,000 | $17,323,722 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 528 | 174,359 | 330.2 | $2,176 | $10,341,768,000 | $19,586,682 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 402 | 173,953 | 432.7 | $2,176 | $9,015,658,000 | $22,427,010 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 267 | 122,013 | 457.0 | $2,176 | $6,382,657,000 | $23,905,082 | 0.01% |

Table 19: Cost per small firm in the educational services industry:

| Table 19: Educational Services Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 21,831 | 50,906 | 2.3 | $2,176 | $1,003,931,000 | $45,986 | 4.73% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 27,938 | 158,913 | 5.7 | $2,176 | $6,788,475,000 | $242,984 | 0.90% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 8,504 | 112,142 | 13.2 | $2,176 | $5,984,604,000 | $703,740 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 8,465 | 213,786 | 25.3 | $2,176 | $13,376,338,000 | $1,580,194 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 4,302 | 209,778 | 48.8 | $2,176 | $14,792,101,000 | $3,438,424 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 1,588 | 117,648 | 74.1 | $2,176 | $9,314,307,000 | $5,865,433 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 888 | 83,741 | 94.3 | $2,176 | $7,129,969,000 | $8,029,244 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 1,003 | 127,781 | 127.4 | $2,176 | $11,306,008,000 | $11,272,191 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 461 | 79,059 | 171.5 | $2,176 | $6,983,007,000 | $15,147,521 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 355 | 73,045 | 205.8 | $2,176 | $6,992,060,000 | $19,695,944 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 268 | 70,191 | 261.9 | $2,176 | $6,343,422,000 | $23,669,485 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 172 | 60,202 | 350.0 | $2,176 | $5,119,182,000 | $29,762,686 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 138 | 55,753 | 404.0 | $2,176 | $4,536,897,000 | $32,876,065 | 0.01% |

Table 20: Cost per small firm in the health care and social assistance industry:

| Table 20: Health Care and Social Assistance Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 107,112 | 162,265 | 1.5 | $2,176 | $5,064,756,000 | $47,285 | 4.60% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 242,566 | 1,027,234 | 4.2 | $2,176 | $66,168,531,000 | $272,786 | 0.80% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 125,095 | 1,054,985 | 8.4 | $2,176 | $88,227,442,000 | $705,284 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 84,361 | 1,466,391 | 17.4 | $2,176 | $126,989,626,000 | $1,505,312 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 26,466 | 1,107,445 | 41.8 | $2,176 | $91,034,690,000 | $3,439,685 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 9,453 | 712,840 | 75.4 | $2,176 | $56,541,818,000 | $5,981,362 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 4,867 | 501,258 | 103.0 | $2,176 | $41,063,966,000 | $8,437,223 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 5,198 | 760,603 | 146.3 | $2,176 | $61,116,459,000 | $11,757,687 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 2,468 | 497,184 | 201.5 | $2,176 | $40,851,963,000 | $16,552,659 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 1,374 | 347,358 | 252.8 | $2,176 | $29,140,498,000 | $21,208,514 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 978 | 284,827 | 291.2 | $2,176 | $25,026,728,000 | $25,589,701 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 665 | 230,360 | 346.4 | $2,176 | $20,167,268,000 | $30,326,719 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 485 | 185,982 | 383.5 | $2,176 | $16,744,181,000 | $34,524,085 | 0.01% |

Table 21: Cost per small firm in the arts, entertainment, and recreation industry:

| Table 21: Arts, Entertainment, and Recreation Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 33,186 | 53,994 | 1.6 | $2,176 | $1,569,733,000 | $47,301 | 4.60% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 46,210 | 199,647 | 4.3 | $2,176 | $11,295,277,000 | $244,434 | 0.89% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 15,493 | 162,642 | 10.5 | $2,176 | $10,894,947,000 | $703,217 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 12,148 | 259,480 | 21.4 | $2,176 | $18,531,141,000 | $1,525,448 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 4,674 | 209,762 | 44.9 | $2,176 | $16,040,448,000 | $3,431,846 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 1,718 | 120,586 | 70.2 | $2,176 | $9,983,571,000 | $5,811,159 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 806 | 74,628 | 92.6 | $2,176 | $6,466,756,000 | $8,023,270 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 660 | 77,131 | 116.9 | $2,176 | $7,102,423,000 | $10,761,247 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 344 | 49,061 | 142.6 | $2,176 | $4,965,644,000 | $14,435,012 | 0.02% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 224 | 40,309 | 180.0 | $2,176 | $4,136,002,000 | $18,464,295 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 155 | 33,220 | 214.3 | $2,176 | $3,428,904,000 | $22,121,961 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 115 | 28,855 | 250.9 | $2,176 | $2,873,044,000 | $24,982,991 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 84 | 25,163 | 299.6 | $2,176 | $2,569,574,000 | $30,590,167 | 0.01% |

Table 22: Cost per small firm in the accommodation and food services industry:

| Table 22: Accommodation and Food Services Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 99,592 | 207,093 | 2.1 | $2,176 | $4,845,922,000 | $48,658 | 4.47% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 216,446 | 1,349,187 | 6.2 | $2,176 | $55,536,558,000 | $256,584 | 0.85% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 79,875 | 1,260,097 | 15.8 | $2,176 | $55,913,962,000 | $700,018 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 56,476 | 1,777,649 | 31.5 | $2,176 | $84,117,236,000 | $1,489,433 | 0.15% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 14,095 | 896,373 | 63.6 | $2,176 | $46,231,300,000 | $3,279,979 | 0.07% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 3,720 | 403,866 | 108.6 | $2,176 | $21,249,810,000 | $5,712,315 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 1,621 | 244,772 | 151.0 | $2,176 | $12,835,230,000 | $7,918,094 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 1,628 | 340,741 | 209.3 | $2,176 | $17,984,834,000 | $11,047,195 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 859 | 252,279 | 293.7 | $2,176 | $13,054,878,000 | $15,197,763 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 446 | 170,201 | 381.6 | $2,176 | $8,420,579,000 | $18,880,222 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 363 | 153,594 | 423.1 | $2,176 | $7,987,110,000 | $22,003,058 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 241 | 115,452 | 479.1 | $2,176 | $6,405,041,000 | $26,576,934 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 170 | 90,301 | 531.2 | $2,176 | $4,832,335,000 | $28,425,500 | 0.01% |

Table 23: Cost per small firm in the other services (except public administration) industry:

| Table 23: Other Services Industry | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Number of Firms | Total Number of Employees | Average Number of Employees per Firm | Annual Cost per Firm | Annual Receipts | Average Receipts per Firm | Annual Cost per Firm as Percent of Receipts |
| Firms with sales/receipts/revenue below $100,000 | 195,234 | 322,002 | 1.6 | $2,176 | $9,308,948,000 | $47,681 | 4.56% |
| Firms with sales/receipts/revenue of $100,000 to $499,999 | 307,613 | 1,225,144 | 4.0 | $2,176 | $75,113,021,000 | $244,180 | 0.89% |
| Firms with sales/receipts/revenue of $500,000 to $999,999 | 87,833 | 756,186 | 8.6 | $2,176 | $61,131,552,000 | $695,998 | 0.31% |
| Firms with sales/receipts/revenue of $1,000,000 to $2,499,999 | 55,883 | 926,035 | 16.6 | $2,176 | $84,065,314,000 | $1,504,309 | 0.14% |
| Firms with sales/receipts/revenue of $2,500,000 to $4,999,999 | 16,522 | 531,104 | 32.1 | $2,176 | $55,620,907,000 | $3,366,475 | 0.06% |
| Firms with sales/receipts/revenue of $5,000,000 to $7,499,999 | 4,967 | 252,838 | 50.9 | $2,176 | $28,838,406,000 | $5,806,001 | 0.04% |
| Firms with sales/receipts/revenue of $7,500,000-$9,999,999 | 2,326 | 151,376 | 65.1 | $2,176 | $18,502,407,000 | $7,954,603 | 0.03% |
| Firms with sales/receipts/revenue of $10,000,000 to $14,999,999 | 2,114 | 173,393 | 82.0 | $2,176 | $23,140,184,000 | $10,946,161 | 0.02% |
| Firms with sales/receipts/revenue of $15,000,000 to $19,999,999 | 1,005 | 104,997 | 104.5 | $2,176 | $14,696,909,000 | $14,623,790 | 0.01% |
| Firms with sales/receipts/revenue of $20,000,000 to $24,999,999 | 620 | 73,209 | 118.1 | $2,176 | $11,076,548,000 | $17,865,400 | 0.01% |
| Firms with sales/receipts/revenue of $25,000,000 to $29,999,999 | 405 | 50,974 | 125.9 | $2,176 | $8,159,095,000 | $20,145,914 | 0.01% |
| Firms with sales/receipts/revenue of $30,000,000 to $34,999,999 | 274 | 42,041 | 153.4 | $2,176 | $6,643,223,000 | $24,245,339 | 0.01% |
| Firms with sales/receipts/revenue of $35,000,000 to $39,999,999 | 227 | 37,259 | 164.1 | $2,176 | $5,392,740,000 | $23,756,564 | 0.01% |

BILLING CODE 4510–45–C

*Paperwork Reduction Act*

Effective Date: 180 days from the date of publication of the final rule.

Compliance Date: Affected parties do not have to comply with the new information collection request until the Department publishes a Notice in the **Federal Register** stating that the Office of Management and Budget (OMB) has approved these information collection requirements under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., or until this rule otherwise takes effect, whichever is later.

Under the PRA, no agency may conduct or sponsor, and no person is required to respond to, a collection of information unless the agency has obtained a valid OMB Control Number. OFCCP will submit the proposed collections of information contained in this proposed rulemaking to OMB for review in accordance with the PRA.

The proposed rule would amend the existing regulation at 41 CFR 60–1.7, which addresses reporting obligations of Federal contractors, by adding a requirement that contractors and subcontractors submit summary data on the compensation paid to employees aggregated by sex, race, ethnicity, job categories, and other relevant data points in the proposed Equal Pay Report. These other data points could include, for example, the number of hours worked and the number of employees. The proposed rule would require contractors to submit the Equal Pay Report electronically unless the Director granted a contractor a hardship exemption from the electronic filing requirement. Further, the proposed rule would require contractors to certify compliance with their reporting obligations under the regulations implementing Executive Order 11246 when bidding on contracts.

The collection of information contained in the existing regulations implementing Executive Order 11246, with the exception of those related to complaint procedures, are currently approved under OMB Control No. 1250–0003 (Recordkeeping and Reporting Requirements-Supply and Service) and OMB Control No. 1250–0001 (Construction Recordkeeping and Reporting).

*Number of Respondents*

As described above, covered contractors and subcontractors with more than 100 employees, a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications, and that are required to file an EEO–1 Report would also be required to submit the proposed Equal Pay Report. Thus, based on the 2012 EEO–1 data, OFCCP estimates that 67,605 contractor establishments would submit an Equal Pay Report in the first year of the rule's effect.

*Information Collections*

OFCCP's proposed information collection request includes the burden hours and costs for conducting the activities outlined in proposed section 60–1.7(b). This information collection package will request approval of a standard form entitled ''Equal Pay Report.''

Proposed section 60–1.7(b)(1) through (3)(ii) would require contractors to submit to OFCCP on an annual basis a report summarizing compensation paid to employees aggregated by gender, race, ethnicity, and job categories. OFCCP estimates that 99 percent of contractors will file the proposed report using the Web-based application and that 1 percent will obtain a hardship exemption to file the report in another manner. The estimated burden hours for contractors using the Web-based application is 401,574 (66,929 × 6 hours = 401,574). The estimated burden hours for those not using the Web-based application is 5,408 (676 × 8 hours = 5,408). The estimated total burden for this provision is 406,982 hours, which accounts for those contractors who use a Web-based application to file the report and those granted a hardship exemption from electronic filing.

Section 60–1.7(b)(3)(iii) proposes to require contractors that cannot file using the Web-based application to request a hardship exemption from OFCCP's Director. Contractors that request such an exemption must write to the Director acknowledging the responsibility, explaining their circumstances and requesting the exemption. OFCCP estimates it would take a contractor 30 minutes to prepare the request, including the time required to print, copy and send the document. The estimated total burden for this provision is 338 (676 × 0.5 hours = 338).

Section 60–1.7(c) requires contractors to maintain the records related to its submission of the proposed Equal Pay Report. OFCCP believes this recordkeeping requirement is within the requirements of section 60–1.12(a) and the burden is included in OMB Control Numbers 1250–0001 and 1250–0003.

*Summary of Costs*

OFCCP estimates the cost to contractors based on BLS data in the publication ''Employer Costs for Employee Compensation'' (December 2013), which lists total compensation for management, professional, and related occupations as $51.58 per hour and administrative support as $24.23 per hour. OFCCP estimates that 25 percent of the burden will be management, professional, and related occupations and 75 percent will be administrative support.

The total estimated cost for contractors to either fill out the proposed Equal Pay Report through the Web-based application or request a hardship extension and complete it using another manner, is listed in Table 24 below.

TABLE 24—SUMMARY OF RECURRING COSTS

| Proposed requirement | Hours | Cost |
|---|---|---|
| Reporting: | | |
| Section 60–1.7(b) Equal Pay Report | 406,982 | $12,643,913 |
| Section 60–1.7(b)(3)(iii) Hardship Exemption Request | 338 | 10,501 |
| Total Reporting Burden | | $12,654,414 |
| Recordkeeping: | | |
| Section 60–1.7 | *0 | 0 |
| Total Recordkeeping Burden | 0 | |
| Total Cost | 407,320 | $12,654,414 |

*An existing requirement.

*Public Comments*

The Department seeks comments on the information collection requirements contained in this proposed rule. Commenters may send their views to the Department in the same way as all other comments (e.g., through the *www.regulations.gov* Web site). While much of the information provided to OMB in support of the information collection request appears in the preamble, a copy of this Information Collection Request, 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*= [INSERTICR REFERENCENUMBER] (this link will only become active on the day following publication of this notice) or by sending a written request to the mail address shown in the **ADDRESSES** section at the beginning of this preamble. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications of the proposed regulations may be addressed to the OMB. Comments to the OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Office of Federal Contract Compliance, Office of Management and Budget, Room 10235, Washington, DC 20503; Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers). You can submit comments to OMB by email at *OIRA_submission@omb.eop.gov.* The OMB will consider all written comments that agency receives within 30 days of publication of this proposed rule. As previously indicated, written comments directed to the Department may be submitted within 30 days of publication of this notice.

The OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed 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 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 IT (e.g., permitting electronic submission of responses).

*Description of Proposed Report and Instructions*

This NPRM proposes specific changes to OFCCP's existing regulation at § 60–1.7 that would make the benefits previously discussed possible. These changes include a proposed new reporting requirement for two categories of covered contractors and subcontractors; specifically, prime contractors and first tier subcontractors that are required to file EEO–1 Reports, and meet the jurisdictional threshold of having more than 100 employees and a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications. This Equal Pay Report would annually require contractors to submit summary compensation data, by sex, race, ethnicity, specified job categories, as well as other relevant data points. These points might include items such as hours worked and the number of employees. The report, as currently proposed, would seek summary W–2 earnings data. For the report, OFCCP is proposing a January 1 through December 31 reporting period, and a report filing window of January 1 to March 31 of the following year. However, OFCCP does not specify the use of W–2 data and the reporting dates in the text of the proposed new regulation. Instead, these details will be in the ICR authorizing the collection and the reporting of data using the report. Electronic submission of the report is being required; however, OFCCP is proposing to create a hardship exemption for those who are unable to perform electronic submission. Contractors and subcontractors would be required to keep their Equal Pay Reports for a period of not less than two years from the date of the making of each report. They would also have to certify that they filed the report with OFCCP from the most recent reporting period when bidding on a Federal contract or subcontract. OFCCP proposes to apply sanctions in 60–1.4(a) and (b) and 60–1.27 to a failure to file a timely, complete and accurate Equal Pay Report and make the appropriate certifications. The information provided on the report would be protected by the Freedom of Information Act to the maximum extent that the information is exempt. It is the practice of OFCCP not to release contractor data where (1) the contractor is still in business, and (2) the contractor indicates, and through the Department of Labor's review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm. In the NPRM, OFCCP proposes creating the authority to publish aggregate information based on compensation data collected from the Equal Pay Report, such as ranges or averages by industry, labor market, or other groupings, but only in such a way as not to reveal any particular establishment's or individual employee's data. OFCCP proposes that it would analyze the information collected on the Equal Pay Reports and, along with other available data, develop industry-based standards for compensation differences, and prioritize contractors and subcontractors for evaluation whose summary data show discrepancies that indicate possible compensation violations.

Reports are completed at the individual establishment level, with headquarters completing an individual report as well. Consolidated reports are not required.

*Sample Format*

A copy of the sample format of the report form and the instructions are provided with the ICR for the purposes of public comment, however, the form itself will not be codified in the regulatory text, but rather through finalization of the process associated with the Paperwork Reduction Act. This three-page report seeks specific information for Federal contractors and subcontractors. Page one of the report requires the contractor and subcontractor establishment to provide identifying information such as location and address, EEO–1 Unit and company numbers, Dun & Bradstreet identifier, and NAICS code(s). Page two of the report is for entering compensation data for all male employees summarized by race, ethnicity, specified job category, and other relevant data points such as the hours worked, and the number of employees in each specified job category. Page three of the report is for entering the compensation data for all female employees summarized by race, ethnicity, specified job categories, and other relevant data points such as the hours worked, and the number of employees in each specified job category. The instructions for completing and submitting the report, as well as definitions, are in a separate document or attachment.

These paperwork burden estimates are summarized as follows:

*Type of Review:* New collection.

*Agency:* Office of Federal Contract Compliance Programs, Department of Labor.

*Title:* Equal Pay Report.

*OMB ICR Reference Number:* 1250–AA03.

*Affected Public:* Business or other for-profit; individuals.

*Estimated Number of Annual Responses:* 67,605.

*Frequency of Response:* Annually.

*Estimated Total Annual Burden Hours:* 407,320.

*Estimated Total Initial and Other Costs:* $46,250,189.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule 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 on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

*Unfunded Mandates Reform Act of 1995*

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this proposed rule does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

*Executive Order 13132 (Federalism)*

OFCCP has reviewed this proposed rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have ''Federalism implications.'' This rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

*Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This proposed rule does not have tribal implications under Executive Order 13175 that requires a tribal summary impact statement. The proposed rule does not have substantial direct effects 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.

*Effects on Families*

The undersigned hereby certifies that the proposed rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

*Executive Order 13045 (Protection of Children)*

This proposed rule would have no environmental health risk or safety risk that may disproportionately affect children.

*Environmental Impact Assessment*

A review of this proposed rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR 1500 et seq.; and DOL NEPA procedures, 29 CFR part 11, indicates the proposed rule would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

*Executive Order 13211 (Energy Supply)*

This proposed rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

*Executive Order 12630 (Constitutionally Protected Property Rights)*

This proposed rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

*Executive Order 12988 (Civil Justice Reform Analysis)*

This proposed rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The proposed rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

**List of Subjects in 41 CFR Part 60–1**

Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Labor, and Reporting and recordkeeping requirements.

**Patricia A. Shiu,**

*Director, Office of Federal Contract Compliance Programs.*

For the reasons set forth in the preamble, OFCCP proposes to amend part 60–1 of Title 41 of the Code of Federal Regulations as follows:

## PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

■ 1. The authority citation for part 60–1 continues to read as follows:

**Authority:** Section 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 399, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230 and E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258.

■ 2. Section 60–1.7 is revised to read as follows:

### § 60–1.7 Reports and other required information.

(a) *EEO–1 Report.* (1) Each prime contractor and subcontractor shall file annually, on or before September 30, complete and accurate reports on Standard Form 100 (EEO–1) promulgated jointly by the Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission (EEOC), or such form as may hereafter be promulgated in its place, if such prime contractor or subcontractor—

(i) Is not exempt from the provisions of these regulations in accordance with § 60–1.5;

(ii) Has 50 or more employees;

(iii) Is a prime contractor or first tier subcontractor; and

(iv) Has a contract, subcontract or purchase order amounting to $50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes:

(2) *Provided,* That any subcontractor below the first tier that performs construction work at the site of construction shall be required to file such a report if it meets the requirements of criteria specified in paragraph (a)(1) of this section.

(3) Each contractor required under paragraph (a)(1) of this section to file the EEO–1 Report(s) must submit a copy of its most recently filed report(s) to the contracting or administering agency within 30 days after the award of a contract, unless the contractor has submitted its EEO–1 Report(s) to the contracting or administering agency

within 12 months preceding the date of the award.

(b) *Equal Pay Report.* (1) The Equal Pay Report, promulgated by OFCCP, requires contractors and subcontractors with more than 100 employees to provide summary data on the compensation paid to employees by sex, race, ethnicity, specified job categories, and other relevant data points. Contractors must submit the Equal Pay Report in the format and manner required by OFCCP.

(2) *Who must file the Equal Pay Report.* The Equal Pay Report must be filed by each prime contractor and first tier subcontractor that is required under paragraph (a)(1) of this section to file the EEO–1 Report(s) with the Joint Reporting Committee that has more than 100 employees, and a contract, subcontract, or purchase order amounting to $50,000 or more that covers a period of at least 30 days, including modifications.

(3) *How, when, and where to file the Equal Pay Report.* (i) The Equal Pay Report must be filed by the date specified in the report.

(ii) Each contractor must submit the Equal Pay Report electronically through OFCCP's web-based filing system by the specified filing deadline, unless the contractor has been granted a hardship exemption under paragraph (b)(3)(iii) of this section.

(iii) The Director may grant a hardship exemption from the requirement to submit the Equal Pay Report electronically where he or she concludes that electronic filing would impose an undue hardship on the contractor. Requests for hardship exemptions are only considered upon the written request of the contractor. The eligibility criteria and application procedures for the hardship exemption are available on the OFCCP Web site. A contractor granted a hardship exemption must submit the Equal Pay Report in the format specified in the notification granting the exemption.

(4) *Confidentiality of the Equal Pay Report.* (i) OFCCP will treat information contained in the Equal Pay Report as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. It is the practice of OFCCP not to release contractor data where:

(A) The contractor is still in business; and

(B) The contractor indicates, and through the Department of Labor's review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm.

(ii) OFCCP may publish aggregate information based on compensation data collected from the Equal Pay Report, such as ranges or averages by industry, labor market, or other groupings, but only in such a way as not to reveal any particular establishment's or individual employee's data.

(c) *Additional information.* The Director or the applicant, on their motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such additional information about its employment practices as the Director or the applicant deems necessary for the administration of the Order. In accordance with the existing obligations in 41 CFR 60–1.12(a), each contractor shall retain its Equal Pay Report for a period of not less than two years from the date of the making of the report. However, if the contractor has fewer than 150 employees or does not have a contract of at least $150,000, this retention period is one year.

(d) *Requirements for bidders or prospective contractors*—(1) *Certifications and representations of compliance with the requirements of Executive Order 11246 and its implementing regulations.* Each agency shall require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to represent by a statement in the bid or in writing at the outset of negotiations for the contract:

(i) Whether it has participated in any previous contract or subcontract subject to the Equal Opportunity Clause in § 60–1.4(a);

(ii) Whether it is currently required to develop affirmative action programs as prescribed under the regulations in this chapter and to file reports set forth in this section;

(iii) And, if so, whether it developed the affirmative action programs;

(iv) Whether it has filed with the Joint Reporting Committee all reports due under the applicable filing requirement; and

(v) Whether it currently holds a Federal contract or subcontract that requires the filing of an Equal Pay Report(s) with OFCCP, and whether it filed an Equal Pay Report with OFCCP for the most recent reporting period, as prescribed by paragraph (b) of this section.

(2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the Director requests prior to the award of the contract or subcontract. When a determination is made to award the contract or subcontract to a specific contractor, that contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Director requests.

(e) *Sanctions for failure to file required reports, and certifications and representations.* Failure to file timely, complete and accurate reports, and certifications and representations as required under this section constitutes a violation of Executive Order 11246 and its implementing regulations that may subject the contractor to the sanctions identified in paragraph (6) of the Equal Opportunity clause in §§ 60–1.4(a) and (b) and 60–1.27.

(f) *Use of reports.* Reports filed pursuant to this section shall be used only in connection with the administration of Executive Order 11246, the Civil Rights Act of 1964, or in furtherance of the purposes of the Order and the Act.

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Part V

## Office of Personnel Management

5 CFR Parts 581, 582, 831, *et al.*
Phased Retirement; Final Rule

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 581, 582, 831, 838, 841, 842, 843, 848, 870, and 890**

**RIN 3206–AM71**

## Phased Retirement

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting its proposed phased retirement regulations with four minor changes. Phased retirement is a human resources tool that will allow full-time employees to work a part-time schedule and draw partial retirement benefits during employment. The ''Moving Ahead for Progress in the 21st Century Act,'' or ''MAP–21,'' requires OPM to publish regulations implementing phased retirement under the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). The final rule informs agencies and employees about who may elect phased retirement, what benefits are provided during phased retirement, how OPM intends to compute the annuity payable during and after phased retirement, and how employees may fully retire after a period of phased retirement. The final rule does not address every administrative detail of the phased retirement process. OPM will be issuing separate guidance to assist agencies and employees with administrative and procedural matters that do not need to be addressed in this rule. Employees may not enter phased retirement or submit applications for phased retirement to OPM until 90 days after publication of this final rule.

**DATES:** Effective November 6, 2014.

**FOR FURTHER INFORMATION CONTACT:** Kristine Prentice, (202) 606–0299.

**SUPPLEMENTARY INFORMATION:** On June 5, 2013, OPM published (at 78 FR 33912) proposed regulations to amend 5 CFR parts 581, 582, 831, 838, 841, 842, 843, 870 and 890, and added 5 CFR part 848 to implement phased retirement pursuant to 5 U.S.C. 8336a and 8142a, as required by section 100121(d) of MAP–21, Public Law 112–141.

Section 100121 of MAP–21 amended chapters 83 and 84 of title 5, United States Code, by adding provisions, at 5 U.S.C. 8336a and 8412a, to permit certain retirement-eligible employees to enter phased retirement. An employee participating in phased retirement is still an employee for all purposes, unless otherwise specified in law or regulation. Initially, OPM will implement the phased retirement working schedule as prescribed in the statute. Thus, the regulations will require an eligible employee who enters phased retirement, with the approval of an authorized agency official, to enter into a 50 percent working schedule and receive approximately 50 percent of what his or her annuity would have been (not including credit for sick leave), had the individual retired completely from Federal service, without electing a survivor annuity. Entry into phased retirement is not guaranteed and must be mutually agreeable to the eligible employee and the employing agency.

Phased retirement is designed to assist agencies with knowledge management and continuity of operations in the short term. Although the main purpose of phased retirement is to enhance the mentoring and training of the employees who will be filling the positions or taking on the duties of more experienced retiring employees, it may also be used to provide employees with the opportunity to share experiences across sections or divisions of an agency. Phased retirement is simply another tool to enable agencies to manage their workforce, promote best practices, and encourage experienced employees to spend some time mentoring the next generation of experts.

### Comments

OPM received 237 comments regarding the proposed rule; 234 of which were submitted before the close of the public comment period. We decline to address the three comments received after the comment period closed. For the most part, OPM will not address comments that were aimed at benefits not in OPM's purview, nor administrative and procedural issues outside the scope of the regulations.

*Out of Scope Comments*

A member of the public and one agency questioned OPM's decision to issue this rule as a proposed rule. This rule was properly issued as a proposed rule pursuant to section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, and does not meet any of the exceptions to the required notice and public comment provisions in 5 U.S.C. 553(b)(3)(A) and (B), and Executive Order 13563. Although OPM is implementing phased retirement with all of the explicit statutory restrictions in place, the rule has been designed to allow OPM to modify both the rule and its accompanying guidance as needed in the future. Phased retirement is not a one-size-fits-all program; an agency and an employee must agree that phased retirement is appropriate for the agency and the employee. After making a decision that phased retirement is appropriate in a given situation, coordination is needed between the employing agency and OPM. Moreover, the technical variables present in the law require OPM to take a measured approach to implementation to ensure a smoother transition to the availability of a new end-of-career option. For these reasons, OPM must provide rules for phased retirement. OPM determined the most appropriate rulemaking process was to issue a proposed rule with public notice and comment to ensure that there is an opportunity for all issues appropriate for regulation to be fully considered and addressed.

Several agencies, commenters, and professional organizations asked questions related to administrative and processing issues outside the scope of these regulations. One commenter suggested that OPM refashion this rule for ease of use by employees so they can make more informed decisions about phased retirement. We decline to make these changes as outside the scope of the rule. Administrative and procedural matters involved with employee elections, agency agreement, coding of personnel actions, processing of forms, and technical and employee information, and other similar issues, are best addressed in guidance, not regulation. This rule is intended to fill gaps in the statutory scheme of phased retirement, and to establish the relative rights and responsibilities of OPM, agencies, and employees with regard to phased retirement. Regulations are not the best means for conveying non-substantive procedural and administrative details regarding the program. OPM has determined that guidance; in the form of advisory documents to agencies, is the most appropriate means to address those matters.

We received many comments concerning benefits or programs administered by other agencies. For example, a few commenters asked about the effect phased retirement would have on Full Time Equivalents. One union suggested that OPM add specific language to the regulations requiring agencies to refrain from making certain budgetary statements and conclusions about the status of employees in phased retirement. OPM cannot address these comments because we do not have authority related to budgetary matters. With regard to Full Time Equivalents, information may be found in existing

guidance, specifically in *OMB Circular A–11,* section 85.5.

We also received numerous comments and questions about the role the Thrift Savings Plan (TSP) plays in many employees' plans for retirement and how employees' access to their TSP funds might be impacted by phased employment. Several professional organizations and agencies voiced similar concerns. For example, some commenters described their plans to rely on withdrawals from the TSP in retirement, particularly prior to age 62. The Federal Retirement Thrift Investment Board is responsible for administering the TSP. Therefore, TSP withdrawal rules and guidelines are outside the scope of this rule. OPM notes that this rule clearly states that participants in phased retirement are still Federal employees; therefore, they may continue to contribute to the TSP, in accordance with TSP rules, during phased employment.

Similarly, several commenters suggested that OPM include more information about the interplay between OPM's benefits and the Social Security Administration's (SSA) benefits within the phased retirement regulations. Commenters requested information about the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) as it applies to phased retirement. The SSA is responsible for applying the WEP and the GPO. OPM cannot address these comments.

Other commenters asked how OPM plans to administer the offset applicable to CSRS offset annuities. How CSRS annuities will be offset during phased retirement is briefly addressed below and in the rule. But, more information will be provided in guidance to be issued separately. OPM will also provide information about where employees and agencies can look for more information on related topics.

One commenter asked how OPM would address an employee's entitlement to worker's compensation if an on-the-job injury occurs during phased retirement. The Office of Workers' Compensation Programs, Division of Federal Employees' Compensation (OWCP), is responsible for the administration of Federal employees' compensation. OPM cannot address this comment. In general, however, an individual cannot receive both annuity (including a phased retirement annuity) and OWCP non-scheduled award benefits at the same time.

Several commenters requested information about income tax-related issues. The Internal Revenue Service (IRS) is responsible for the tax code, tax regulations and official guidance. To the extent that OPM is responsible for providing information about taxes to annuitants, we will do so in guidance. We decline to address taxes here.

Many commenters simply expressed interest in participating in phased retirement and requested information to that effect. Several commenters submitted duplicate comments and requests for information about when phased retirement would be available. Other commenters asked whether their specific work unit or branch of government would be implementing phased retirement. A commenter suggested that phased retirement should be mandatory for all federal employees beginning at age 55. Another commenter wanted OPM to apply lessons learned from academia's experiences with phased retirement. These comments are outside the scope of the rule and OPM declines to address them further except to state that agencies are responsible for employee retirement counseling; entry into phased retirement is not mandatory and it is just one of several end-of-career options for employees and agencies to consider on a case-by-case basis. Because agencies must decide whether to implement phased retirement, OPM cannot address comments or questions about specific work unit or agency timelines for implementation. However, OPM encourages agencies to evaluate and implement phased retirement as a workforce planning tool as soon as possible. OPM is not attempting to impose participation by employees or agencies on any set schedule.

Multiple commenters inquired about a phased retiree's leave accrual and the lump-sum payment for annual leave. As provided by 5 CFR § 831.1715(g) and § 848.205(i), except as otherwise expressly provided in law or regulation, a phased retiree is treated like any other employee on a part-time tour of duty. The normal leave accrual rules for part-time employees apply to phased retirees. Leave accrual for part-time employees is prorated based on hours in a pay status. *See* 5 U.S.C. 6302(c) and 5 CFR 630.303. An employee does not receive a lump-sum payment for annual leave upon electing phased retirement. The lump-sum annual leave payment would be made in full when the phased retiree fully retires. *See* 5 U.S.C., chapter 55, subchapter VI, and 5 CFR part 550, subpart L. Therefore, an employee would maintain his or her annual leave balance upon transition to phased retirement.

Some commenters questioned whether or not a phased retire is eligible for holiday pay. Under 5 CFR 831.1715(g) and 848.205(i), except as otherwise expressly provided in law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty. The normal rules for part-time employees and holidays apply to phased retirees. A part-time employee is entitled to a holiday when the holiday falls on a day when he or she would otherwise be required to work or take leave. If a holiday falls on a non-workday, part-time employees are not entitled to an ''in lieu of'' holiday.

A few commenters inquired as to whether or not a phased retiree would be eligible to earn compensatory time off. Overtime pay and compensatory time off generally is earned for work in excess of 8 hours in a day or 40 hours in a workweek. (See 5 U.S.C. 5542 and 5 CFR 550.101 for FLSA-exempt employees and 5 CFR part 551, subpart E, for FLSA-covered employees.) Phased retirees will normally not work more than 40 hours in a biweekly pay period (see limited exceptions discussed at 5 CFR 831.1715(h) and 848.205(j)), but they potentially could earn overtime pay or compensatory time off for work in excess of 8 hours in a day.

Some commenters and one agency, asked for clarification on work in excess of the part-time schedule and the ability of a phased retiree to earn compensatory time off for travel. Under 5 U.S.C. 5550b and 5 CFR part 550, subpart N, compensatory time off for travel is earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. A phased retiree is eligible to earn compensatory time off for travel under the normal rules.

Official travel time during periods when a part-time employee is otherwise scheduled to work counts as hours of work. Treatment of travel time outside an employee's officially established part-time schedule depends on the applicable rules. (**Note:** The rules on travel hours of work depend on whether an employee is covered by or exempt from the Fair Labor Standards Act (FLSA). For FLSA-exempt employees, the crediting of travel time as hours of work is governed under title 5, United States Code. In particular, 5 U.S.C. 5542(b)(2) and 5544(a)(3) and 5 CFR 550.112(g) and (j). For FLSA-covered employees, travel time is credited if it qualifies as hours of work under either the title 5 rules or under OPM's FLSA regulations. *See,* 5 CFR §§ 551.401(h) and 551.422.

If a phased retiree's travel time outside of the officially established part-time schedule does not count as hours of work under the applicable rules, it

will not cause a violation of 5 CFR 831.1415(h) or 848.205(j). If the travel outside of the officially established part-time schedule is considered hours of work under the applicable rules, then the travel may be assigned only under the circumstances listed in 5 CFR 831.1415(h) and 848.205(j).

Multiple commenters inquired about eligibility for receiving voluntary separation incentive payments (VSIP) when entering phased retirement or when leaving phased retirement to enter full retirement. The VSIP authority, also known as buyout authority, allows agencies that are downsizing or restructuring to offer employees lump-sum payments of up to $25,000 as an incentive to voluntarily separate from Federal service. An employee entering phased retirement is not separating from Federal employment and is not eligible for a VSIP. An employee leaving phased retirement to separate and enter full retirement may be eligible for a VSIP if the eligibility criteria in 5 U.S.C. Chapter 35, subchapter II, and the implementing regulations are met at that time.

Multiple commenters also inquired about eligibility for voluntary early retirement in conjunction with entry into phased retirement. Employees eligible under an approved voluntary early retirement authority (VERA) are not eligible for phased retirement. The statutory definition of ''retirement-eligible employee'' in 5 U.S.C. §§ 8336a and 8412a expressly limits eligibility to phased retirement to individuals who meet the requirements for retirement under 5 U.S.C. 8336(a) and (b) for CSRS and 5 U.S.C. 8412(a) and (b) for FERS. These subsections establish eligibility for optional retirement. The provisions concerning early retirement eligibility are set out at 5 U.S.C. 8336(d) for CSRS and 5 U.S.C. 8414 for FERS. Therefore, employees eligible under a VERA do not meet the statutory definition of a ''retirement-eligible employee'' for entry into phased retirement.

One agency remarked that the use of phased retirement may make VERA less attractive to employees when an agency is downsizing. OPM disagrees because employees eligible for VERA are not eligible for phased retirement. Any further discussion of the impact of phased retirement on the use of VERA is outside the scope of these regulations.

Multiple commenters inquired about a phased retiree's treatment during a reduction in force (RIF). An employee in phased retirement is treated as a part-time employee for the purposes of RIF. The treatment of a part-time employee during a RIF is outside the scope of this regulation and is covered in 5 CFR part 351.

One agency and one commenter asked whether a phased retiree would be subject to a furlough. An employee in phased retirement is a part-time employee for the purposes of a furlough and as such, is subject to furlough in the same manner as part-time employees in regular employment. The treatment of part-time employees for the purposes of furloughs is outside the scope of these regulations.

One commenter asked whether work schedules would be negotiable or fixed. Work schedules for employees represented by a labor organization are generally negotiable within the bounds of governing law and regulation, but the negotiability of a particular proposal relating to work schedules of a phased retiree, as for any part-time employee, will depend on the specific facts of each situation. Negotiability of work schedules is outside the scope of these regulations and will have to be addressed through regularly established employee relations processes.

OPM received questions about the potential for outside employment while in phased retirement and the option for employment as a reemployed annuitant after the phased retiree enters full retirement. During a period of phased employment, phased retirees are still employees, and are bound, as such, by ethics rules and any restrictions on outside employment. We decline to address the issue of employment as a reemployed annuitant after a period of phased retirement because it is outside the scope of this rule.

Two agencies expressed interest in how the use of phased retirement would impact an agency's authority to hire reemployed annuitants. One agency asked if phased retirement was intended to be a replacement for the use of reemployed annuitants. Phased retirement and reemployment of annuitants are both tools that an agency may use to meet workforce planning goals. Phased retirement is not meant to replace the reemployment of annuitants. Whether the use of phased retirement will impact an agency's use of reemployed annuitants is outside the scope of these regulations.

Several commenters requested information about the appeals process available to phased retirees. They questioned, whether, in the final regulations, OPM intends to provide an appeals process for employees who believe they were unfairly denied the opportunity to participate in phased retirement initially or who were unfairly denied consent to return from phased retirement to regular full-time employment. Similarly, other commenters made excellent observations about circumstances where employees may dispute an agency's decision. All of these issues are best addressed in guidance. Participation in phased retirement is entirely voluntary and requires the mutual consent of both the employee and employing agency. A retirement-eligible employee ''may elect'' to enter phased retirement status if she meets the eligibility criteria. This discretionary language regarding the employee's decision describes the voluntary nature of phased retirement. Also, an employee is not entitled to enter into phased retirement. Other than the new statutory and regulatory requirements unique to phased retirement, employees in phased retirement retain the same rights and responsibilities as in regular employment. Any complaint procedures, including any applicable administrative or collective bargaining grievance procedures that are available in regular employment remain available to phased retirees, but no new rights are provided.

One commenter, presumably a CSRS employee not subject to OASDI tax, asked to be able to contribute to Social Security during phased retirement. Social Security coverage is governed by existing law and the amendments made by section 100121 of the MAP–21 made no change to the existing law. Employees who are excluded from Social Security coverage at the time they enter phased retirement continue to be excluded from Social Security coverage during phased retirement.

Another commenter, also presumably a CSRS employee, asked OPM to clarify whether he would be able to receive more than 80 percent of his pension after phased retirement. In general, under CSRS an annuity may not exceed 80 percent of the average pay of the employee (see 5 U.S.C. 8339(f)). Therefore, the amount of the phased retirement annuity computed under 5 U.S.C. 8339, before it is multiplied by the phased retirement percentage, cannot exceed 80 percent of the employee's average pay. Likewise, the amount of the fully retired phased component of the composite annuity computed under 5 U.S.C. 8339, before it is multiplied by the working percentage, may not exceed 80 percent of the employee's average pay (unless credit for the employee's unused sick leave raises the annuity above the 80 percent threshold). If a CSRS employee exceeds the 80 percent limitation either before or during phased retirement; his excess contributions will be refunded back to him at his full retirement.

Several commenters requested information concerning changes to the eligibility rules and employee contributions for the Federal Employees Dental and Vision Program (FEDVIP), the Federal Long Term Care Insurance Program (FLTCIP), and the Federal Flexible Spending Account Program (FSAFEDS). The authorizing legislation for phased retirement did not alter the laws or regulations governing the FEDVIP, the FLTCIP, or the FSAFEDS programs. A phased employee may elect to participate in these benefit programs and work as a phased retiree if he/she meets all benefit eligibility requirements. Also, because a phased retiree is an active Federal employee, the rules governing enrollment and participation in these programs are the same as for all other eligible employees.

One commenter requested information concerning an employee's bargaining unit status eligibility under a Master Agreement if the employee enters phased retirement. Whether an employee is in a particular bargaining unit depends on the bargaining unit's description found in the Certification of Representative issued by the Federal Labor Relations Authority. Phased retirees are part-time employees. Therefore, it is possible that bargaining unit status could change, for example, if full-time employees are covered by that particular bargaining unit's Certification of Representative, but part-time employees are excluded from that bargaining unit.

One agency submitted a question concerning employees who elect phased retirement and are subsequently found to be in the wrong retirement system. Phased retirees are covered by the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), Title II of Public Law 106–265, 114 Stat. 762, enacted September 19, 2000, and have the same rights under the FERCCA as before entry into phased retirement. OPM expects coverage errors to be addressed by the agencies prior to an employee's entry into phased retirement.

Below, OPM describes in more detail the comments we received which are specifically applicable to the proposed regulations themselves. In general, these comments will be addressed in regulatory part and section order. Certain comments referring to regulatory parts 831 and 848 are addressed together for the convenience of the reader. In those instances, where the comments require different answers OPM will first address part 831 and then part 848. If a section is not addressed, either OPM did not receive comments referencing that section, or the comments were addressed more generally above.

*Parts 581 and 582; Garnishment*

There were three comments regarding garnishment. One commenter asked that the new provision at 5 CFR 581.306(d) identify the responsible office within agencies for garnishment notification. This rule does not modify the other provisions related to processing garnishment orders found in 5 CFR parts 581 and 582. The agents designated for service of process for garnishment orders are listed in Appendix A of part 581 and Appendix A of part 582. Appendix A presently lists the following address for garnishment of payments of retirement benefits under CSRS and FERS: ''Associate Director for Retirement and Insurance, Office of Personnel Management, Court Ordered Benefits Branch, P.O. Box 17, Washington, DC 20044.'' OPM notes that parts 581 and 582 may be further updated in a separate rule.

One agency inquired whether court orders, including garnishments, would be included in the phased retirement application packages and, if not, inquired as to how agencies would otherwise receive such court orders. This rule does not revise the procedures or mechanisms for submitting court orders, including divorce decrees and garnishment orders, to the appropriate officials at the appropriate agencies. Rather, it adds one additional notice requirement when an employee enters phased retirement and has a garnishment order on record. Pursuant to new § 581.306(d), when an employee enters phased retirement, agencies are required to notify the party who caused the garnishment order to be served that the obligor is now entitled to a phased retirement annuity.

Another agency requested more information about the level of coordination required between the agencies and OPM with regard to garnishments. OPM addressed the issue of garnishment in the supplementary information to the proposed rule. Phased retirement annuities, like regular Federal annuities, will not be subject to commercial garnishments under 5 CFR part 582, and only the part-time pay received during phased employment will continue to be subject to commercial garnishment. Paragraph (d) is added to § 581.306 to account for employees who enter phased retirement status and who are subject to non-commercial garnishment orders (such as child support orders).

Governmental entities will still be obligated to honor the non-commercial garnishment order as it pertains to ongoing part-time pay, subject to the rules set forth in part 581 of title 5, of the Code of Federal Regulation. The amounts subject to garnishment may have to be adjusted at the time an employee enters phased retirement as there are certain caps on the percentage of salary that may be garnished. However, paragraph (d) imposes an additional obligation on the governmental entity to notify the party who caused the legal process to be served that the obligor is now entitled to a phased retirement annuity and to direct the party to the designated agent at OPM who is responsible for the disbursement of retirement benefits. The onus is then on the obligor to submit additional income withholding orders or other garnishment orders to OPM directly if the obligor also seeks to garnish the employee's phased retirement annuity.

*831.1702 and 848.102; Definitions*

A commenter inquired about which level of the agency or sub agency would be responsible for approving or denying phased retirement applications. The regulations currently designate the agency head as the authorized approving official and also allow that approving official to delegate the responsibility as appropriate in §§ 831.1702 and 848.102. Therefore, an agency has the discretion to designate the appropriate approving officials.

A number of commenters questioned whether OPM properly excluded them from participation in phased retirement by defining ''full-time'' as an officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (or 80 hours per biweekly pay period for employees with a flexible or compressed work schedule) under 5 CFR 831.1702 and 848.102. For example, one commenter from the judicial branch stated that she presently works a 36-hour workweek, which she stated was considered full-time for purposes of the Federal Employees Health Benefit Program (FEHB). In actuality, the FEHB law does not provide that a 36-hour workweek is a full-time schedule; it merely provides that employees with certain part-time schedules referenced in 5 U.S.C. 3401 (16 to 32 hours per week) are subject to a reduced, prorated Government contribution toward FEHB premiums. The amount of the Government contribution does not change the nature of a schedule as full-time versus part-time. The commenter would not be permitted to elect phased retirement because she does not meet the definition

of ''full-time'' for phased retirement purposes. The definition of full-time used for phased retirement is the standard definition used by the retirement program to compute annuities. The treatment of employees with various types of work schedules under other benefits programs are not applicable to chapters 83 and 84 of title 5 and would be counter to proper administration of the retirement program. Therefore, OPM declines to modify the regulations to accommodate employees already working a part-time work schedule.

*831.1703 and 848.103; Implementing Directives*

Several commenters suggested that OPM regulate phased retirement more stringently; others suggested the opposite. For example, a number of comments suggested making it more difficult for agencies to deny entry into phased retirement. Still others advised that fewer restrictions were better. Some agency commenters recommended that OPM provide more information on aspects of the phased retirement program that impact internal processing issues and procedures. OPM declines to further regulate phased retirement at this time. Moreover, many of the issues raised by these commenters are more properly addressed in Benefits Administration Letters and other guidance to be promulgated by the Director of OPM in conjunction with this final rule.

*831.1711 and 848.201; Eligibility*

Numerous commenters, including several unions and employee organizations, objected to the eligibility requirements described in §§ 831.1711 and 848.201. Several commenters objected to the requirement in § 831.1711(a) and § 848.201(a) which states that in order to enter phased retirement, the employee must have been employed on a full-time basis for not less than the 3-year period ending on the effective date of entry into phased retirement status. A few commenters suggested that OPM allow some employees who have part-time service in the preceding 3-year period to enter phased retirement with a smaller or prorated annuity. One commenter suggested that annuitants should be allowed to come back to mentor during an emergency situation like fighting a large forest fire. Another commenter asked that we allow persons who have retired since phased retirement was enacted to come back to work under phased retirement. OPM does not have the authority to waive or adjust the requirement that eligible employees must have been employed full-time for the 3 years preceding entry into phased retirement. This is an express statutory requirement of 5 U.S.C. 8336a(b)(1) and 8412a(b)(1).

Many commenters, including several unions and employee organizations, also objected to the requirement in § 831.1711(b) and § 848.201(b) that describes, for the purposes of phased retirement only, a retirement-eligible employee as an employee, who if separated from service, would meet the requirements for retirement under subsections (a) or (b) of 5 U.S.C. 8336 and 8412. Several commenters opined that OPM is arbitrarily excluding certain groups of employees from participation in phased retirement. A few commenters noted that they became Federal employees later in life and felt unfairly excluded from phased retirement because of their late entry into Federal careers. Many commenters suggested that OPM allow persons with at least 15 years of service to participate in phased retirement, while others suggested that OPM allow those who have at least 5 years of service and who have reached at least age 62 to participate. Some commenters suggested that OPM should waive the eligibility requirements for employees in receipt of military retired pay. Two commenters asked for a waiver specific to their worksite. Some commenters argued that OPM should waive the age requirements in certain situations; others suggested that OPM simply restrict phased retirement using any of these criteria: Prior experiences, total number of years of service, or willingness to mentor others. OPM cannot modify the regulations to permit expansion of the eligibility criteria to include these employees. Under CSRS, participation in phased retirement is limited to those persons eligible for an immediate retirement with at least 30 years of service and who are at least age 55 or who have at least 20 years of service and who are at least age 60. *See* 5 U.S.C. 8336a(a)(9). Similarly, under FERS, participation in phased retirement is limited to those persons eligible for an immediate retirement with at least 30 years of service and who have reached their minimum retirement age (between ages 55 and 57 depending on birth year) or who have at least 20 years of service and who are at least age 60. *See* 5 U.S.C. 8412a(a)(9). There is no ambiguity or flexibility in the law which would permit OPM to limit or expand phased retirement eligibility based on age or years of service, therefore, OPM cannot modify the rule as requested.

Two commenters asked why OPM would exclude most retirement-eligible employees who are subject to mandatory retirement from entry into phased retirement under § 831.1711(c) or § 848.201(c). Both suggested that employees subject to mandatory retirement might want to spend the last couple of years of their career in phased retirement mentoring younger employees, particularly if they have already served twenty years, but are waiting until their mandatory separation age. OPM is unable to make the suggested changes. Except for certain Customs and Border Protection Officers hired prior to 2008, law enforcement officers, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, members of the Capital Police and members of the Supreme Court Police are excluded from participation in phased retirement under 5 U.S.C. 8336a(a)(9)(B) and 8412a(a)(9)(B). Further, sections 8336a and 8412a require OPM to compute phased retirement annuities using the annuity formulas under 5 U.S.C. 8339 and 8415 applicable to regular employees; an outcome that employees subject to the higher retirement deductions would not want, if it were allowed, because it would entail giving up their higher annuity benefits computed using a higher accrual rate.

*831.1712 and 848.202; Working Percentage and Established Hours*

Numerous commenters asked OPM to immediately allow a wider range of permissible working percentages. OPM declines to do so at this time. Under 5 U.S.C. 8336a(b)(2)(A) and (B) and 8412a(b)(2)(A) and (B), the working percentage for employees in phased retirement must be 50 percent unless the Director of OPM determines that other percentages are appropriate. We have determined that the working percentage should remain at 50 percent for the time being. The implementation of phased retirement requires a complex realignment of end-of-career planning for both individuals and agencies. Multiple administrative and technical processes either have to be established or adjusted to accommodate phased retirement. Furthermore, OPM has determined that the working percentage should remain at 50 percent, at least during the beginning of the program, to allow time to assess the impact of phased retirement processing on regular retirement processing.

Several other commenters suggested that under §§ 831.1712 and 848.202 OPM has promulgated too narrow a ''working percentage,'' arguing that OPM does not have the authority to specify a single ''working percentage'' of 50 percent. Instead, they assert that the

50 percent ''working percentage'' would, not only not meet their needs, but OPM is wrong to mandate a particular working percentage at all. Under 5 U.S.C. 8336a(b)(2)(A) and 8412a(2)(A), the ''working percentage'' must be 50 percent unless the Director of OPM, in her discretion, decides otherwise. As we stated above, phased retirement is complex; it not only requires OPM to modify its processes and procedures, other organizations must make similar efforts to implement it effectively. Ultimately, OPM requires a certain amount of experience with phased retirement before we are comfortable introducing more complexity into the program. Therefore, OPM declines to modify the rule.

Other commenters suggested that we provide a range of working percentages to accommodate other work schedules. As noted in the supplementary information of the proposed rule (see 78 FR 33914), the statute permits a working percentage of 50 percent (i.e., a halftime work schedule) and contemplates additional working percentages, at OPM's discretion. Although a working percentage of 50 percent is the only working percentage permitted under §§ 831.1712 and 848.202, these sections have been drafted using language to easily allow OPM to amend the regulations in the future to allow working percentages other than 50 percent, if and when OPM determines that such an amendment is appropriate. OPM will be evaluating the phased retirement program to determine if different ''working percentages'' should be allowed. For now, a phased retiree will not be permitted to have a working percentage other than 50 percent.

One commenter suggested that a step-down approach to the working percentage would enable phased retirement to be more widely adopted. Sections 8336a(b)(2)(C) and 8412(a)(b)(2)(C) specify that ''[t]he working percentage for a phased retiree may not be changed during the phased retiree's phased retirement period.'' Therefore, OPM cannot authorize agencies to allow phased retirees to change their working percentage during phased retirement.

Some commenters asked OPM to allow phased employees to stagger their work schedules over months and not pay periods. As provided by 5 CFR 831.1712 and 848.202, the number of officially established hours per pay period to be worked by an employee in phased retirement status must equal one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status (i.e., 40 hours per pay period for most employees). The specific hours the phased retiree works is subject to agency work schedule policy and any applicable negotiated agreement. For example, a phased retiree may participate in an agency's flexible or compressed work schedule program under subchapter II of 5 U.S.C. 6101 and subpart D of 5 CFR part 610 on the same basis as any other part-time employee.

One commenter suggested that OPM allow phased retirees to work at least 1,040 hours per year (50 percent of 2,080 hours per work year) to offer greater flexibility to potential retirees while allowing federal agencies to benefit from phased retirees' knowledge and experience. The commenter's suggestion cannot be implemented because a phased retiree must be a part-time employee with a regularly scheduled tour of duty. A phased retiree may not work on an intermittent basis (i.e., without a regularly scheduled tour of duty). For this reason, the required working percentage must be met on a pay period basis rather than an annual basis. We also note that using an annual approach would impose a more burdensome administrative and recordkeeping requirement on the agencies and payroll providers.

A commenter questioned whether or not a phased retiree would be allowed to be placed into an intermittent schedule status. The commenter also noted that the proposed regulations appear to imply a fixed part-time tour of duty. Although unclear, the commenter seemed to be concerned as to whether such individuals would have their phased retirement benefits discontinued, or would be required to be removed from the phased retirement program. In certain circumstances, outside the context of phased retirement, employees may be moved to an intermittent tour (i.e., no weekly work guarantee). An intermittent employee does not have a scheduled tour of duty. A phased retiree must be a part-time employee with a scheduled tour of duty equal to one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status (i.e., 40 hours per pay period for most employees). The change to an intermittent schedule is not allowed for an employee in phased retirement. An employee in phased retirement wishing to make such a change in work schedule would need to opt out of the phased retirement program by returning to regular employee status before making the schedule change. A phased retiree may have a part-time flexible schedule under 5 U.S.C. 6122, but the number of hours worked each biweekly pay period must be fixed at 40 hours.

*831.1713 and 848.203; Applications for Phased Retirement*

A number of commenters inquired whether employees in supervisory or managerial positions would be eligible to participate in phased retirement. Each agency has the discretion to determine whether or not phased retirement would be appropriate for an employee in a supervisory or managerial position just as for non-supervisory positions.

Several commenters expressed interest in how an agency would use its discretion to approve or deny requests to enter phased retirement. Two commenters inquired as to whether or not there were specific criteria an agency must use when approving or denying requests. Similarly, an agency asked if there would be guidelines in place to ensure consistent application among managers. Yet another agency inquired about how an agency could implement its discretion based on the regulations and avoid discrimination concerns. OPM agrees that an agency should have criteria in place that guide decisions to approve or deny applications for phased retirement. Such criteria will provide transparency to the approval process by allowing managers and employees to understand the basis for an approval or denial decision. Therefore, we are amending the regulations at §§ 831.1713(e) and 848.203(e) to require agencies to establish written criteria to be used when approving or denying applications for phased retirement. Agencies should be aware that some matters relating to phased retirement, including procedures and arrangements for adversely affected employees, may be subject to collective bargaining obligations.

One agency questioned whether an agency has the discretion to determine that it will not approve any applications for phased retirement. Phased retirement is a workforce planning tool that an agency may choose to use when appropriate. At the same time, phased retirement is not an employee entitlement. Agencies have the discretion to approve some, all, or none of the phased retirement applications received from employees. Phased retirement is just one of many tools designed to provide agencies with more flexibility in managing their workforces, therefore OPM encourages agencies to utilize phased retirement when

appropriate. Agencies should be aware that some matters relating to phased retirement, including procedures and arrangements for adversely affected employees, may be subject to collective bargaining obligations.

*831.1713(d), 848.203(d); Time Limits*

Multiple commenters expressed concerns about the length of time that an employee may participate in phased retirement. Some agencies inquired as to whether OPM intended phased retirement to be open-ended or time-limited. OPM recognizes that for most employees phased retirement will be of a limited duration. However, there may also be instances where agencies may find it useful for phased retirees to serve for longer periods of time. To allow agencies the maximum amount of flexibility in using phased retirement as a workforce management tool, OPM is leaving the establishment and use of time limits to the discretion of the agencies.

A number of commenters, employees and agencies alike, requested that OPM impose a maximum period of time for an employee to spend in phased retirement. OPM disagrees that a maximum time limit is needed for phased retirement. An agency's need for an employee in phased retirement will most likely vary on a case-by-case basis; therefore, agencies should have flexibility in determining the amount of time any employee may spend in phased retirement.

Some commenters remarked that the use of a time limit as a condition of approval could potentially create a coercive situation. Other commenters noted that the use of a time limit is a way of establishing mandatory separations or imposing an adverse action upon the employee. OPM disagrees with these suggestions. By allowing the use of a time limit, the agency and the employee may choose a mutually agreeable time limit at the start of phased retirement as a tool to set clear expectations for both the agency and the employee. If an employee does not like the proposed time limit, he or she has the freedom to withdraw the application for phased retirement. Once a time limit agreement is in place, the employee still has the discretion to enter full retirement status at any time prior to reaching the established time limit or request approval from the agency to return to regular employment. At the end of the agreed upon time limit, the employee has the option to return to regular employment with the approval of the current agency, or to transfer to another agency (where phased retirement may or may not be continued), or to enter full retirement status. If an agency needs to remove an employee in phased retirement prior to the end of the time limit agreement due to budget restrictions, performance, or conduct, the agency may continue to use existing workforce authorities such as removal for performance or conduct; transfer of function or reduction in force; as appropriate.

*831.1715(c)–(d), 848.205(c)–(d); Effect of Phased Retirement*

Several commenters inquired about the ability of an employee in phased retirement to transfer to another agency. To do so, the employee must request approval from the new agency to continue in phased retirement upon transfer just as he or she did when entering phased retirement in the current agency. OPM will provide additional procedural information on transferring an employee in phased retirement in guidance.

One commenter noted that the agency would have to take an adverse action to separate a phased retiree who has no time limit agreement. While in phased retirement, an employee continues to have the same performance and conduct requirements as in regular employment. Thus, an employee in phased retirement who has poor performance or conduct problems will be subject to the appropriate action, up to and including removal. The individual retains the same due process rights as any other employee in a similar situation.

*831.1715(g) and 848.205(i); Phased Retirees Treated as Part-Time Employees*

OPM also received several comments regarding employee contributions to FERS and CSRS. During phased employment, retirement deductions for FERS and CSRS, Social Security (as appropriate) and Medicare taxes, as well as income tax will continue to be withheld from the pay the employee receives from the employing agency during phased employment. Those deductions and taxes are made at the normal deduction and tax rates and are based on the pay the employee actually receives during phased employment, not on the amount the employee would have received had the employee continued to work full-time.

A commenter inquired about the possibility of liquidating annual leave for those employees who receive approval for phased retirement. The commenter suggested that he would like the ability to roll over the dollar value of his annual leave directly into his traditional (non-Roth) or Roth TSP. OPM does not have the statutory authority to permit liquidation of annual leave upon an employee's election of phased retirement.

Some commenters asked if phased retirement would affect an employee's annual leave ceiling. As provided by 5 CFR 831.1715(g) and 848.205(i), except as otherwise expressly provided by law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty. The normal leave accrual rules for part-time employees apply to phased retirees. Leave accrual for part-time employees is prorated based on hours in a pay status. *See* 5 U.S.C. 6302(c) and 5 CFR 630.303. Under 5 CFR 630.304, a part-time employee may accumulate not more than 240 or 360 hours' of annual leave on the same basis as a full-time employee may accumulate not more than 30 or 45 days' annual leave. Thus, the election of phased retirement will not alter an employee's annual leave ceiling (i.e., ''use-or-lose'' annual leave).

Some commenters questioned if phased retirees would be eligible for within grade increases. A phased retiree is treated just as any other employee on a part-time tour of duty. *See* 5 CFR 831.1715(g) and 848.205(i). The normal within-grade increase rules for part-time employees apply to phased retirees. Days of full-time and part-time service are equally creditable towards within-grade increase waiting periods. *See* 5 CFR 531.405(a).

*831.1715, 848.205, and 890.501; Health and Life Insurance Premiums*

One commenter questioned why the proposed rule states that Federal Employees Health Benefit Program (FEHB) and Federal Employees' Group Life Insurance Program (FEGLI) contributions will be deducted from the phased retiree's pay, while the definition of ''net annuity'' in 5 CFR 838.103 lists health and life insurance premiums among the deductions from a phased retiree's gross annuity. The definition of ''net annuity'' in 5 CFR 838.103 in used in applying regulations dealing with court orders, which apply to all retirees, not just phased retirees. Most retirees have health and life insurance premiums deducted from their annuities; therefore, the definition of ''net annuity'' must reference those premiums. In the case of phased retirees, the references to health and life insurance premiums in the definition of ''net annuity'' may be disregarded, since during phased retirement the FEHB and FEGLI enrollments will stay with the employing agency and premiums will be deducted from a phased retiree's pay. Also, the FEHB employer contribution will be the same as for full-time

employees, and FEGLI benefit coverage amounts will be based upon the full-time salary for the position occupied during the phased employment period. *See* §§ 831.1715(a)(1) and 848.205(a)(1) for FEHB premiums; §§ 831.1715(a)(2) and 848.205(a)(2) for FEGLI premiums.

Phased employment service is creditable toward the 5 years of service needed to continue FEHB coverage as an annuitant. In the event an employee ends his or her phased retirement for full retirement, FEHB benefits will continue if the employee meets all eligibility requirements as of the separation from service on which the full retirement is based.

*831.1721, 831.1731, 848.301, and 848.401; Management Decision To End Phased Retirement*

One commenter asked if management can end phased retirement at its discretion; similar to the removal of a reemployed annuitant, the removal of an employee on a temporary appointment, or for reasons such as budget or poor performance. Employees in phased retirement remain employees on permanent appointments. The phased retirement statute specifies that an employee may return to regular employment by mutual agreement of the agency and the phased retiree. Agencies may continue to use existing workforce authorities such as removal for performance or conduct; transfer of function or reduction in force, as appropriate, should the agency need to limit, change or end the employment of an employee in phased retirement. Agencies should be aware that some matters relating to phased retirement, including procedures and arrangements for adversely affected employees, may be subject to collective bargaining obligations.

*831.1731(b) and 848.401(b); Entering Full Retirement*

One union commented that OPM's deeming an employee to have elected full retirement results in a needlessly harsh outcome if the employee were separated from phased employment and not reemployed elsewhere in the Federal government within 3 days. The organization suggested that OPM modify the rule to allow 30 days to elapse before deeming an election of full retirement to have taken place. OPM declines to adopt this suggestion because §§ 831.1732(b) and 848.402(b) require the phased retirement annuity to end upon an employee's separation from service as a phased retiree. OPM considers a separation of more than 3 days after ending phased employment to be just like any other 3 day break in service affecting retirement coverage. Here, the difference is that the composite retirement annuity will commence the day after separation. Sections 831.1731(b) and 848.401(b) must be read in conjunction with §§ 831.1732 and 848.402, since the later sections state that a phased retirement annuity terminates upon separation from service and the composite retirement annuity begins the next day. From an administrative standpoint, it does not make sense for OPM to continue phased retirement annuity payments for even a 30 day window where an improper payment might result. Employees are responsible for taking the appropriate actions to return to full employment, accept a different non-phased retirement part-time schedule, or to fully retire. Procedures are already in place that would enable a losing or gaining agency to modify an employee's retirement records where the employee's apparent inaction should be corrected.

*831.1732 and 848.402; Commencing Date of the Composite Retirement Annuity*

A commenter and an agency noted that under § 831.1732(a), unlike retirements under the regular CSRS rules, a phased retiree's composite annuity would commence the day after separation and wondered about the rationale OPM used to justify this change. Section 848.402(a) has the same effect. In analyzing the effect of phased retirement on employees, OPM determined that for a phased retiree, this change in practice was necessary to ensure continuity of income and proper crediting of service in the context of the composite retirement annuity. Therefore, under §§ 831.1732(a) and 848.402(a), the composite retirement annuity commences the day after the employee's separation from service.

*831.1741, 831.1742, 848.501, and 848.502; Phased Retirement Annuity Computation*

One commenter suggested that OPM increase the appeal of phased retirement by adjusting the CSRS annuity formula upward to make phased retirement more attractive to employees. Other commenters suggested that OPM similarly modify the FERS annuity formula as well. The commenters opined that more generous incentives would motivate CSRS and FERS employees to remain in Federal service as phased retirees. We also received comments suggesting that FERS employees should receive their full unreduced pensions upon final retirement to make up for the perceived shortfalls in their pensions as a result of not having coverage under CSRS. OPM cannot make the suggested changes because OPM has no authority to change the annuity formulas and calculations established by Congress in statute. Moreover, phased retirement is strictly optional and its attractiveness, or lack thereof, will not alter the basic structural differences between CSRS and FERS. If phased retirement is unattractive to an employee, then the employee is under absolutely no obligation to enter into it.

OPM also received several questions about how changes in an employee's ''high-three'' average pay would be addressed during phased retirement. Upon entry into phased retirement, OPM will compute the ''phased retirement annuity'' using the three highest consecutive average pay years the employee had accrued up until that point. During phased retirement, if a new high-three average pay were to accrue, it would be reflected in the computation of the composite annuity. At full retirement, the ''phased retirement annuity'' portion of the employee's annuity would not change; but, the ''fully retired phased component'' portion would take the new average pay into account. Therefore, a new high-three average pay achieved during phased retirement would only affect the portion of the total (composite) annuity (i.e., the ''fully retired phased component'' of the composite annuity), but not the portion of the composite annuity consisting of the ''phased retirement annuity.''

Two commenters noted that it appeared that OPM had made an error in describing the computation of a phased retirement annuity in the Benefits and Computation section of the supplementary information. We agree. The statement should have read ''[w]hile working part-time during phased retirement, employees will also receive annuity payments, consistent with the retirement benefits they were entitled to prior to entering phased retirement status, *multiplied* by the ''phased retirement percentage'' (i.e., 50 percent).''

OPM received a few comments concerning the methodology we will employ in applying the required offset to CSRS Offset annuities based on the employee's entitlement to Social Security benefits. Upon entry into phased retirement, the offset will be computed by first determining the offset amount that would have applied had the employee fully retired instead electing phased retirement and then multiplying that offset amount by the phased retirement percentage. This

adjustment is made from the monthly rate of the phased retirement benefit. When the composite annuity is computed, a new offset amount will be determined as if the employee had retired for the first time and that amount will be applied to the total composite monthly annuity. *See* 5 CFR 831.1741(c) and 831.1742(c)(2). The offset amount applied to the phased retirement annuity will not be factored in to the computation of the composite annuity. See 5 CFR 831.1742(a)(1).

*831.1742(b)(2) and 848.502(b)(2); Deemed Rate of Basic Pay*

One union asked OPM to consider allowing overtime pay earned under 19 U.S.C. § 267(a) to be considered in base pay for the purposes of computing the composite retirement annuity. We decline to make the requested change. The phased retirement statute requires phased retirees to be deemed to be full-time for the purpose of determining basic pay for either life insurance or the composite annuity. The law also limits the pay subject to retirement deductions based on this concept of full time. As a result, hours worked above and beyond a 40-hour work schedule will not be considered basic pay for either life insurance or the composite annuity.

*831.1742(b)(3) and 848.502(b)(3); Crediting Sick Leave*

Several commenters questioning how employees will be credited for their unused sick leave in the computation of the composite annuity received at final retirement. The commenters appear to be concerned that OPM is not correct in using division where multiplication might be expected. However, the statute expressly addresses this issue. The division of unused sick leave is appropriate. The formula is designed to ensure that employees receive full credit for their unused sick leave balance in the computation of the composite annuity. The unused sick leave balance is credited in the fully retired phased component of the composite annuity calculation before that component gets multiplied by the working percentage. Without any adjustment made to the unused sick leave balance, the value of the unused sick leave in the composite annuity would be proportionally reduced when the fully retired phased component gets multiplied by the working percentage. Dividing the unused sick leave balance by the working percentage and using the result in the computation of the fully retired phase component of the composite annuity ensures that the appropriate credit for the unused sick leave is retained in the annuity after the fully retired phased component is multiplied by the working percentage.

For example, if a regular CSRS employee separates for retirement with 6 months of unused sick leave credit (1,044 hours) and a high-3 average pay of $80,000, the value of the unused sick leave credit would equal $800 ($80,000 × 2 percent × 6/12). If a CSRS phased retiree with a working percentage of 50 percent separates for full retirement with 6 months of unused sick leave credit (1,044 hours) and a high-3 average pay of $80,000, the value of the unused sick leave credit without any adjustment would equal $400 ([$80,000 × 2 percent × 6/12] × 50 percent), which is $400 less than the value that should be attributed to the unused sick leave credit. Dividing the sick leave credit by the working percentage and using the result in the fully retired phased component would result in 12 months credit (2,088 hours) for unused sick leave (6 months divided by 50 percent equals 12 months; 1,044 hours divided by 50 percent equals 2,088 hours). The resulting value of the unused sick leave in the composite annuity, after applying 12 months credit for the unused sick leave in the fully retired phased component, equals $800 ([$80,000 × 2 percent × 12/12] × 50%), the full value that should be attributed to the unused sick leave credit.

This analysis applies equally to the FERS computation. If a FERS employee retires at age 61 with a high-3 average pay of $80,000 and 6 months unused sick leave credit, the value of that unused sick leave credit would be $400 ($80,000 × 1% × 6/12). To ensure that a phased retiree with a working percentage of 50 percent separating at age 61 with a high-3 average pay of $80,000 and 6 months unused sick leave credit would get $400 credit for the unused sick leave, divide the sick leave credit by the working percentage and use the result (6 months divided by 50 percent equals 12 months) in the computation of the fully retired phased component ([$80,000 × 1% × 12/12] × 50% = $400).

Several employees requested that we consider allowing the use of unused sick leave in both the phased retirement annuity component and the fully retired phased component. OPM cannot make the suggested change. Under §§ 8336a and 8412a, of title 5, United States Code, unused sick leave is available for use in the annuity computation only upon an employee's entry into full retirement.

*831.1761–831.1763 and 848.701–848.703; Death Benefits and Lump-sums*

We received one comment from an employee organization which noted that §§ 848.701 through 848.703 did not appear to have equivalent CSRS sections. The organization suggested that OPM fix this perceived oversight as an equitable consideration. We would direct the employee organization to §§ 831.1761 through 831.1763 which are the corresponding CSRS sections to the FERS sections they cited. No changes to the regulations are required.

*831.1771; Reemployment of an Individual Who Has Separated From Phased Employment*

One agency commented that the first sentence in § 831.1771(b) was difficult to read. We agree and have modified the sentence for clarity. The word ''reemployment'' has been substituted for the words ''the employment'' and the term ''upon reemployment'' has been substituted for ''upon employment''.

*831.1781 and 848.901; Mentoring*

Many comments addressed the necessity of requiring an employee in phased retirement to spend 20 percent of work time in mentoring activities. One agency commented that the regulations should allow an agency and the employee to determine the number of mentoring hours collaboratively instead of requiring mentoring 20 percent of the time. The authorizing statute clearly requires that not less than 20 percent of hours worked must consist of mentoring. Therefore, OPM cannot adopt this suggestion.

One union and several individual commenters remarked that a more specific definition of mentoring should be included in the regulations. The same union also commented that mentoring should be defined as peer mentoring. Mentoring can encompass a wide range of activities that allow for the transfer of knowledge and skills from one employee to others. To provide agencies with the maximum amount of flexibility in meeting the mentoring requirement we have purposefully included a broad definition of mentoring so that employees and managers would have options in choosing mentoring activities that would best fit an agency's needs.

Several commenters suggested that the regulations should include specific criteria for a establishing a formal mentoring program as well as procedures for monitoring compliance with the mentoring requirement. Participation in a formal mentoring

program is just one of many ways that an employee in phased retirement could meet the mentoring requirement. In some instances, other forms of mentoring that are not a part of a formal mentoring program would be appropriate. Therefore, OPM declines to adopt this suggestion.

Some commenters also indicated that agencies should be encouraged to use best practices when assigning mentoring activities. While OPM does encourage agencies to use best practices and any other available resources when implementing the mentoring requirement, such information is outside the scope of this rule. A professional organization inquired if a phased retiree could meet the mentoring requirement by participating as volunteer mentor for students in school or community programs while on leave or during other non-work periods. While we appreciate the efforts of all federal employees who participate in school and community volunteer activities during non-work periods, such volunteer efforts will not count toward the mentoring requirement. The mentoring requirement can only be met when an employee spends 20 percent of paid working hours in mentoring activities.

*838.242(b); Court Orders and Service Computation*

One agency and one union noticed that our amendment to § 838.242(b) omitted a reference to how OPM will credit unused sick leave under FERS in computing an annuity subject to a court order. We agree and we have made the change. The sentence now reads as follows: ''Unused sick leave is counted as ''creditable service'' on the date of separation for an immediate CSRS or FERS annuity.''

*848.501 and 848.502; Phased Retirement and Composite Annuities Under FERS*

Several commenters inquired as to how OPM plans to apply the 1.1 percent computation that applies to FERS annuitants who separate from service after reaching at least age 62 with at least 20 years of service to phased retirees during phased retirement and again at full retirement. Because the 1.1 percent annuity computation is predicated on the eligible FERS employee having reached at least age 62 with at least 20 years of service, OPM will apply it to both the phased retirement annuity and the composite annuity as appropriate. Under 5 U.S.C. 8412a(c)(1), OPM must compute the phased retirement annuity using the appropriate amount of annuity payable under 5 U.S.C. 8415 as if, on the date on which she enters phased retirement, the FERS employee had separated from service and retired under section 8412(a) or (b). For example, a FERS employee who is otherwise eligible to receive the 1.1 percent annuity computation at retirement would, upon entry into phased retirement, have her annuity computed using the 1.1 percent annuity computation. However, a FERS employee who enters phased retirement prior to reaching age 62 would not receive the 1.1 percent annuity computation in her phased retirement annuity. If she later fully retires after reaching at least age 62 and meets the eligibility requirements, under 5 U.S.C. 8412a(f), she would receive the 1.1 percent annuity computation in the fully retired phased component of her composite annuity; the phased retirement component of her composite annuity would be based on the original 1.0 percent annuity computation, updated by cost-of-living adjustments.

*848.504; Phased Retirees Are Not Eligible for the Annuity Supplement*

Several commenters, including a few agencies, employee organizations and unions objected to the requirement in the regulations that FERS covered phased retirees would be ineligible for the FERS annuity supplement under 5 U.S.C. 8421 and asked OPM to modify the rule. Others noted that it would be a disincentive to FERS covered employees to enter phased retirement without OPM also authorizing payment of the FERS annuity supplement. One commenter suggested, therefore, that OPM should pay 50 percent of the FERS annuity supplement to remedy this issue. OPM cannot modify the rule to pay the FERS annuity supplement during phased retirement because 5 U.S.C. 8412a(j) specifically states that FERS-covered phased retirees are not eligible to receive it.

**Summary of Changes**

Based on the comments OPM received, we made four changes to the regulatory text. A new paragraph (e) was added to §§ 831.1713 and 848.203, respectively. Section 831.1771(b) was edited for clarity: In the first sentence, ''reemployment'' has been substituted for ''the employment'' and ''upon reemployment'' has been substituted for ''upon employment''. Section 838.242(b) was modified to include the words ''and FERS''. No other changes were made.

**Executive Order 13563 and Executive Order 12866**

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees who elect phased retirement status.

**List of Subjects**

*5 CFR Part 581*

Alimony, Child support, Government employees, Wages.

*5 CFR Part 582*

Claims, Government employees, Wages.

*5 CFR Part 831*

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

*5 CFR Part 838*

Alimony, Claims, Courts, Government employees, Pensions, Retirement.

*5 CFR Part 841*

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 842*

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 843*

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 848*

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

*5 CFR Part 870*

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

*5 CFR Part 890*

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

**Katherine Archuleta,**

*Director.*

Accordingly, OPM is amending 5 CFR parts 581, 582, 831, 838, 841, 842, 843, 870, and 890 and adding a new part 848, as follows:

## PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

■ 1. The authority citation for part 581 is revised to read as follows:

**Authority:** 42 U.S.C. 659; 15 U.S.C. 1673; E.O. 12105 (43 FR 59465 and 3 CFR 262)(1979). Secs. 581.102 and 581.306 also issued under 5 U.S.C. 8336a and 8412a.

■ 2. Amend § 581.102 by adding paragraphs (l) and (m) to read as follows:

### § 581.102 Definitions.

* * * * *

(l) *Phased retirement status* has the same meaning given that term in § 838.103 of this chapter; and

(m) *Phased retirement annuity* has the same meaning given that term in § 838.103 of this chapter.

■ 3. Amend § 581.306 by revising the section heading and adding paragraph (d) to read as follows:

### § 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process; transfer of service of legal process to another governmental entity.

* * * * *

(d) In instances where an employee obligor, who is employed by a governmental entity which is honoring a continuing legal process, enters phased retirement status in accordance with part 831, subpart Q, and part 848 of this chapter, the entity must inform the party who caused the legal process to be served, or the party's representative, and the court or other authority, that remuneration for employment will continue at a reduced rate and that the employee obligor will be receiving a phased retirement annuity. The governmental entity must provide the party with the designated agent at the Office of Personnel Management who is responsible for the disbursement of retirement benefits.

## PART 582—COMMERCIAL GARNISHMENT OF FEDERAL EMPLOYEES' PAY

■ 4. The authority citation for part 582 is revised to read as follows:

**Authority:** 5 U.S.C. 5520a; 15 U.S.C. 1673; E.O. 12897; Sec. 582.102 also issued under 5 U.S.C. 8336a and 8412a.

■ 5. Amend § 582.102 by revising paragraph (2) to read as follows:

### § 582.102 Definitions.

* * * * *

(2) *Employee or employee-obligor* means an individual who is employed by an *agency* as defined in this section, including a reemployed annuitant, an individual engaged in phased employment as defined in part 831, subpart Q, and part 848 of this chapter, and a retired member of the uniformed services who is employed by an agency. *Employee* does not include a retired employee, a member of the uniformed services, a retired member of the uniformed services, or an individual whose service is based on a contract, including an individual who provides personal services based on a contract with an agency.

* * * * *

## PART 831—RETIREMENT

■ 6. The authority citation for part 831 is revised to read as follows:

**Authority:** 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart Q also issued under 5 U.S.C. 8336a; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388–328.

■ 7. Amend § 831.303 by revising paragraph (c)(1) to read as follows:

### § 831.303 Civilian service.

* * * * *

(c)(1)(i) An employee or Member whose retirement is based on a separation before October 28, 2009, and who has not completed payment of a redeposit for refunded deductions based on a period of service that ended before October 1, 1990, will receive credit for that service in computing the nondisability annuity for which the individual is eligible under subchapter III of chapter 83 of title 5, United States Code, provided the nondisability annuity commences after December 1, 1990; and

(ii) An employee or Member whose retirement is based on a separation on or after October 28, 2009, and who has not completed payment of a redeposit for refunded deductions based on a period of service that ended before March 1, 1991, will receive credit for that service in computing the nondisability annuity for which the individual is eligible under subchapter III of chapter 83 of title 5, United States Code.

* * * * *

■ 8. Amend § 831.402 by revising the definition of ''applicant for retirement'' and adding the definitions of ''full retirement status'' and ''phased retiree'' in alphabetical order to read as follows:

### § 831.402 Definitions.

In this subpart:

*Applicant for retirement* means a person who is currently eligible to retire under CSRS on an immediate or deferred annuity, and who has filed an application to retire, other than an application for phased retirement status, that has not been finally adjudicated.

* * *

*Full retirement status* means the status of a phased retiree who has ceased employment and is entitled, upon application, to a composite retirement annuity.

* * *

*Phased retiree* means a retirement-eligible employee who—

(1) Has entered phased retirement status under subpart Q of this part; and

(2) Has not entered full retirement status.

* * * * *

■ 9. Amend § 831.403 by revising paragraph (a) to read as follows:

**§ 831.403 Eligibility to make voluntary contributions.**

(a) Voluntary contributions may be made only by—

(1) Employees (including phased retirees) or Members currently subject to CSRS, and

(2) Applicants for retirement, including phased retirees who apply for full retirement status under subpart Q of this part.

* * * * *

■ 10. Revise § 831.501 to read as follows:

**§ 831.501 Time for filing application.**

An employee or Member who is eligible for retirement must file a retirement application with his or her agency. A former employee or Member who is eligible for retirement must file a retirement application with OPM. The application should not be filed more than 60 days before becoming eligible for benefits. If the application is for disability retirement, the applicant and the employing agency should refer to subpart L of this part. If the application is for phased retirement status, the employee and the employing agency should refer to subpart Q of this part.

■ 11. Amend § 831.701 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Redesignate paragraphs (d) through (f) as paragraphs (e) through (g);

■ c. Add new paragraph (d).

The revision and addition read as follows:

**§ 831.701 Effective dates of annuities.**

(a) Except as provided in paragraphs (b) through (d) of this section, an annuity of an employee or Member commences on the first day of the month after—

* * * * *

(d) A phased retirement annuity and a composite retirement annuity granted to an employee under section 8336a of title 5, United States Code, and defined under § 831.1702, commences as provided in subpart Q of this part.

* * * * *

■ 12. Amend § 831.703 by revising the definition of ''full-time service'' in paragraph (b) to read as follows:

**§ 831.703 Computation of annuities for part-time service.**

* * * * *

(b) * * *

*Full-time service* means service performed by an employee who has—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority);

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority);

(3) For a firefighter covered by 5 U.S.C. 5545b(b) who does not have a 40-hour basic workweek, a regular tour of duty averaging at least 106 hours per biweekly pay period; or

(4) A work schedule that is considered to be full-time by express provision of law, including a work schedule established for certain nurses under 38 U.S.C. 7456 or 7456A that is considered by law to be a full-time schedule for all purposes.* * *

■ 13. Add subpart Q to part 831 to read as follows:

**Subpart Q—Phased Retirement**

Sec.
831.1701 Applicability and purpose.
831.1702 Definitions.
831.1703 Implementing directives.

Entering Phased Retirement

831.1711 Eligibility.
831.1712 Working percentage and officially established hours for phased employment.
831.1713 Application for phased retirement.
831.1714 Effective date of phased employment and phased retirement annuity commencing date.
831.1715 Effect of phased retirement.

Returning to Regular Employment Status

831.1721 Ending phased retirement status to return to regular employment status.
831.1722 Effective date of end of phased retirement status to return to regular employment status.
831.1723 Effect of ending phased retirement status to return to regular employment status.

Entering Full Retirement Status

831.1731 Application for full retirement status.
831.1732 Commencing date of composite retirement annuity.

Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

831.1741 Computation of phased retirement annuity.
831.1742 Computation of composite annuity at final retirement.
831.1743 Cost-of-living adjustments.

Opportunity of a Phased Retiree to Pay a Deposit or Redeposit for Civilian or Military Service

831.1751 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.
831.1752 Deposit for military service.
831.1753 Civilian and military service of an individual affected by an erroneous retirement coverage determination.

Death Benefits

831.1761 Death of phased retiree during phased employment.
831.1762 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.
831.1763 Lump-sum credit.

Reemployment After Separation From Phased Retirement Status

831.1771 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

Mentoring

831.1781 Mentoring.

## Subpart Q—Phased Retirement

**§ 831.1701 Applicability and purpose.**

This subpart contains the regulations implementing provisions of 5 U.S.C. 8336a authorizing phased retirement. This subpart establishes the eligibility requirements for making an election to enter phased retirement status, the procedures for making an election, the record-keeping requirements, and the methods to be used for certain computations not addressed elsewhere in part 831.

**§ 831.1702 Definitions.**

In this subpart—

*Authorized agency official* means—

(1) For the executive branch agencies, the head of an Executive agency as defined in 5 U.S.C. 105;

(2) For the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency;

(3) For the judicial branch, the Director of the Administrative Office of the U.S. Courts;

(4) For the Postal Service, the Postmaster General;

(5) For any other independent establishment that is an entity of the Federal Government, the head of the establishment; or

(6) An official who is authorized to act for an official named in paragraphs (1)–(5) in the matter concerned.

*Composite retirement annuity* means the annuity computed when a phased retiree attains full retirement status.

*Director* means the Director of the Office of Personnel Management.

*Full retirement status* means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity.

*Full-time* means—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority); or

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority).

*Phased employment* means the less-than-full-time employment of a phased retiree.

*Phased retiree* means a retirement-eligible employee who—

(1) With the concurrence of an authorized agency official, enters phased retirement status; and

(2) Has not entered full retirement status.

*Phased retirement annuity* means the annuity payable under 5 U.S.C. 8336a before full retirement.

*Phased retirement percentage* means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent.

*Phased retirement period* means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment.

*Phased retirement status* means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

*Working percentage* has the meaning given that term in § 831.1712(a).

**§ 831.1703 Implementing directives.**

The Director may prescribe, in the form he or she deems appropriate, such detailed procedures as are necessary to carry out the purpose of this subpart.

## Entering Phased Retirement

**§ 831.1711 Eligibility.**

(a) A retirement-eligible employee, as defined in paragraphs (b) and (c), may elect to enter phased retirement status if the employee has been employed on a full-time basis for not less than the 3-year period ending on the effective date of phased retirement status, under § 831.1714(a).

(b) Except as provided in paragraph (c) of this section, a retirement-eligible employee means an employee who, if separated from the service, would meet the requirements for retirement under subsection (a) or (b) of 5 U.S.C. 8336.

(c) A retirement-eligible employee does not include—

(1) A member of the Capitol Police or Supreme Court Police, or an employee occupying a law enforcement officer, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer position, except a customs and border protection officer who is exempt from mandatory separation and retirement under 5 U.S.C. 8335 pursuant to section 535(e)(2)(A) of Division E of the Consolidated Appropriations Act, 2008, Public Law 110–161;

(2) An individual eligible to retire under 5 U.S.C. 8336(c), (m), or (n); or

(3) An employee covered by a special work schedule authority that does not allow for a regularly recurring part-time schedule, such as a firefighter covered by 5 U.S.C. 5545b or a nurse covered by 38 U.S.C. 7456 or 7456A.

**§ 831.1712 Working percentage and officially established hours for phased employment.**

(a) For the purpose of this subpart, *working percentage* means the percentage of full-time equivalent employment equal to the quotient obtained by dividing—

(1) The number of officially established hours per pay period to be worked by a phased retiree, as described in paragraph (b) of this section; by

(2) The number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b) The number of officially established hours per pay period to be worked by an employee in phased retirement status must equal one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. These hours make up the officially established part-time work schedule of the phased retiree and exclude any additional hours worked under § 831.1715(h).

**§ 831.1713 Application for phased retirement.**

(a) To elect to enter phased retirement status, a retirement-eligible employee covered by § 831.1711 must—

(1) Submit to an authorized agency official a written and signed request to enter phased employment, on a form prescribed by OPM;

(2) Obtain the signed written approval of an authorized agency official to enter phased employment; and

(3) File an application for phased retirement, in accordance with § 831.104.

(b) Except as provided in paragraph (c) of this section, an applicant for phased retirement may withdraw his or her application any time before the election becomes effective, but not thereafter.

(c) An applicant for phased retirement may not withdraw his or her application after OPM has received a certified copy of a court order (under part 581 or part 838 of this chapter) affecting the benefits.

(d)(1) An employee and an agency approving official may agree to a time limit to the employee's period of phased employment as a condition of approval of the employee's request to enter phased employment and phased retirement, or by mutual agreement after the employee enters phased employment status.

(2) To enter into such an agreement, the employee and the approving official must complete a written and signed agreement.

(3) The written agreement must include the following:

(i) The date the employee's period of phased employment will terminate;

(ii) A statement that the employee can request the approving official's permission to return to regular employment status at any time as provided in § 831.1721; the agreement must also explain how returning to regular employment status would affect the employee, as described in §§ 831.1721–1723.

(iii) A statement that the employee has a right to elect to fully retire at any time as provided in § 831.1731;

(iv) A statement that the employee may accept a new appointment at another agency, with or without the new agency's approval of phased employment, at any time before the expiration of the agreement or within 3 days of the expiration of the agreement; the agreement must also explain how accepting an appointment at a new agency as a regular employee would affect the employee, as described in §§ 831.1721–1723;

(v) An explanation that when the agreed term of phased employment ends, the employee will be separated from employment and that such separation will be considered voluntary based on the written agreement; and

(vi) An explanation that if the employee is separated from phased employment and is not employed within 3 days (i.e., the employee has a break in service of greater than 3 days), the employee will be deemed to have elected full retirement.

(4) The agency approving official and the employee may rescind an existing agreement, or enter into a new agreement to extend or reduce the term of phased employment agreed to in an

existing agreement, by entering into a new written agreement meeting the requirements of this paragraph, before the expiration of the agreement currently in effect.

(e) An agency must establish written criteria that will be used to approve or deny applications for phased retirement before approving or denying applications for phased retirement.

**§ 831.1714 Effective date of phased employment and phased retirement annuity commencing date.**

(a) Phased employment is effective the first day of the first pay period beginning after phased employment is approved by the authorized agency official under § 831.1713(a), or the first day of a later pay period specified by the employee with an authorized agency official's concurrence.

(b) The commencing date of a phased retirement annuity (i.e., the beginning date of the phased retirement period) is the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 831.1713(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

**§ 831.1715 Effect of phased retirement.**

(a)(1) A phased retiree is deemed to be a full-time employee for the purpose of 5 U.S.C. chapter 89 and 5 CFR part 890 (related to health benefits), as required by 5 U.S.C. 8336a(i). The normal rules governing health benefits premiums for part-time employees in 5 U.S.C. 8906(b)(3) do not apply.

(2) A phased retiree is deemed to be receiving basic pay at the rate applicable to a full-time employee holding the same position for the purpose of determining a phased retiree's annual rate of basic pay used in calculating premiums (employee withholdings and agency contributions) and benefits under 5 U.S.C. chapter 87 and 5 CFR part 870 (dealing with life insurance), as required by 5 U.S.C. 8336a(n). The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. Only basic pay for hours within the deemed full-time schedule will be considered, consistent with 5 U.S.C. 8336a(n) and the definition of ''full-time'' in § 831.1702. Any premium pay creditable as basic pay for life insurance purposes under 5 CFR 870.204 for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed annual rate of basic pay under this paragraph.

(b) A phased retiree may not be appointed to more than one position at the same time.

(c) A phased retiree may move to another position in the agency or another agency during phased retirement status only if the change would not result in a change in the working percentage. To move to another agency during phased retirement status and continue phased employment and phased retirement status, the phased retiree must submit a written and signed request and obtain the signed written approval, in accordance with § 831.1713(a)(1) and (2), of the authorized agency official of the agency to which the phased retiree is moving. Notwithstanding the provisions of § 831.1714, if the authorized agency official approves the request, the phased retiree's phased employment and phased retirement status will continue without interruption at the agency to which the phased retiree moves. If the authorized agency official at the agency to which the phased retiree moves does not approve the request, phased employment and phased retirement status terminates in accordance with § 831.1722(b).

(d) A phased retiree may be detailed to another position or agency, subject to 5 CFR part 300, subpart C, if the working percentage of the position to which detailed is the same as the working percentage of the phased retiree's position of record.

(e) A retirement-eligible employee who makes an election under this subpart may not elect an alternative annuity under 5 U.S.C. 8343a.

(f) If the employee's election of phased retirement status becomes effective, the employee is barred from electing phased retirement status again. Ending phased retirement status or entering full retirement status does not create a new opportunity for the individual to elect phased retirement status.

(g) Except as otherwise expressly provided by law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty for all other purposes.

(h)(1) A phased retiree may not be assigned hours of work in excess of the officially established part-time schedule (reflecting the working percentage), except under the conditions specified in paragraph (h)(2) of this section.

(2) An authorized agency official may order or approve a phased retiree to perform hours of work in excess of the officially established part-time schedule only in rare and exceptional circumstances meeting all of the following conditions:

(i) The work is necessary to respond to an emergency posing a significant, immediate, and direct threat to life or property;

(ii) The authorized agency official determines that no other qualified employee is available to perform the required work;

(iii) The phased retiree is relieved from performing excess work as soon as reasonably possible (e.g., by management assignment of work to other employees); and

(iv) When an emergency situation can be anticipated in advance, agency management made advance plans to minimize any necessary excess work by the phased retiree.

(3) Employing agencies must inform each phased retiree and his or her supervisor of—

(i) The limitations on hours worked in excess of the officially established part-time schedule;

(ii) The requirement to maintain records documenting that exceptions met all required conditions;

(iii) The fact that, by law and regulation, any basic pay received for hours outside the employee's officially established part-time work schedule (as described in § 831.1712(a)(1) and (b)) is subject to retirement deductions and agency contributions, in accordance with 5 U.S.C. 8336a(d), but is not used in computing retirement benefits; and

(iv) The fact that, by law and regulation, any premium pay received for overtime work or hours outside the full-time schedule, that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), will not be subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8336a(d), and that any such premium pay received will not be included in computing retirement benefits.

(4) Employing agencies must maintain records documenting that exceptions granted under paragraph (h)(2) of this section meet the required conditions. These records must be retained for at least 6 years and be readily available to auditors. OPM may require periodic agency reports on the granting of exceptions and of any audit findings.

(5) If OPM finds that an agency (or subcomponent) is granting exceptions that are not in accordance with the requirements of this paragraph (h), OPM may administratively withdraw the agency's (or subcomponent's) authority to grant exceptions and require OPM approval of any exception.

(6) If OPM finds that a phased retiree has been working a significant amount of excess hours beyond the officially established part-time schedule to the degree that the intent of the phased retirement law is being undermined, OPM may require that the agency end the individual's phased retirement by unilateral action, notwithstanding the normally established methods of ending phased retirement. This finding does not need to be based on a determination that the granted exceptions failed to meet the required conditions in paragraph (h)(2) of this section. With the ending of an individual's phased retirement, that individual must be returned to regular employment status on the same basis as a person making an election under § 831.1721—unless that individual elects to fully retire as provided under § 831.1731.

(7) A phased retiree must be compensated for excess hours of work in accordance with the normally applicable pay rules.

(8) Any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), is not subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8336a(d).

(i) A phased retiree is deemed to be an annuitant for the purpose of subpart S of 5 CFR part 831.

## Returning to Regular Employment Status

### § 831.1721 Ending phased retirement status to return to regular employment status.

(a) *Election to end phased retirement status to return to regular employment status.* (1) A phased retiree may elect, with the permission of an authorized agency official, to end phased employment at any time to return to regular employment status. The election is deemed to meet the requirements of 5 U.S.C. 8336a(g) regardless of the employee's work schedule. The employee is not subject to any working percentage limitation (i.e., full-time, 50 percent of full-time, or any other working percentage) upon electing to end phased retirement status.

(2) To elect to end phased retirement status to return to regular employment status, a phased retiree must—

(i) Submit to the authorized agency official, on a form prescribed by OPM, a written and signed request to end phased retirement status to return to regular employment status; and

(ii) Obtain the signed written approval of the authorized agency official for the request.

(3) An employee may cancel an approved election to end phased retirement status to return to regular employment status by submitting a signed written request to the agency and obtaining the approval of an authorized agency official before the effective date of return to regular employment status.

(4) The employing agency must notify OPM that the employee's phased retirement status has ended by submitting to OPM a copy of the completed election to end phased retirement status to return to regular employment status within 15 days of its approval.

(b) *Mandated return to regular employment status.* A phased retiree may be returned to regular employment status as provided under § 831.1715(h)(6).

(c) *Bar on reelection of phased retirement.* Once an election to end phased retirement status to return to regular employment status is effective, the employee may not reelect phased retirement status.

### § 831.1722 Effective date of end of phased retirement status to return to regular employment status.

(a)(1) Except as provided in paragraph (b) of this section, if a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 831.1721 on any date on or after the first day of a month through the fifteenth day of a month, the phased retiree's resumption of regular employment status is effective the first day of the first full pay period of the month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(2) If a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 831.1721 on any date on or after the sixteenth day of a month through the last day of a month, the phased retiree's resumption of regular employment status is effective on the first day of the first full pay period of the second month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(3) The phased retirement annuity terminates on the date determined under paragraph (a)(1) or (2) of this section.

(b) When a phased retiree moves from the agency that approved his or her phased employment and phased retirement status to another agency and the authorizing official at the agency to which the phased retiree moves does not approve a continuation of phased employment and phased retirement status, phased employment and phased retirement status terminates when employment ends at the current employing agency.

### § 831.1723 Effect of ending phased retirement status to return to regular employment status.

(a) After phased retirement status ends under § 831.1722, the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, are determined based on the law in effect at the time of any subsequent separation from service.

(b) After an individual ends phased retirement status to return to regular employment status, for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, at the time of the subsequent separation from service, the phased retirement period will be treated as if it had been a period of part-time employment with the work schedule described in § 831.1712(a)(1) and (b). The part-time proration adjustment for the phased retirement period will be based upon the individual's officially established part-time work schedule, with no credit for extra hours worked. In determining the individual's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the individual's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(c) The restrictions in §§ 831.1751 and 831.1752 regarding when an individual must complete a deposit for civilian service, a redeposit for civilian service that ended on or after March 1, 1991, or a deposit for military service do not apply when a phased retiree ends phased retirement status to return to regular employment status under this section.

(d) When a phased retiree whose phased retirement annuity was subject to an actuarial reduction for unpaid redeposit service, in accordance with § 831.303(c) and (d), ends phased retirement status to return to regular employment status, the annuity the individual becomes entitled to at retirement is subject to the actuarial reduction, increased by cost-of-living adjustments under § 831.1743(d). For

the purpose of applying the provisions of § 831.1743(d) under this paragraph, cost-of-living adjustments are applied through the annuity commencing date.

**Entering Full Retirement Status**

**§ 831.1731 Application for full retirement status.**

(a) *Election of full retirement.* (1) A phased retiree may elect to enter full retirement status at any time by submitting to OPM an application for full retirement in accordance with § 831.104. This includes an election made under § 831.1715(h)(6) in lieu of a mandated return to regular employment status. Upon making such an election, a phased retiree is entitled to a composite retirement annuity.

(2) A phased retiree may cancel an election of full retirement status and withdraw an application for full retirement by submitting a signed written request with the agency and obtaining the approval of an authorized agency official before the commencing date of the composite retirement annuity.

(b) *Deemed election of full retirement.* A phased retiree who is separated from phased employment for more than 3 days enters full retirement status. The individual's composite retirement annuity will begin to accrue on the commencing date of the composite annuity as provided in § 831.1732, and payment will be made after he or she submits an application in accordance with § 831.104 for the composite retirement annuity.

(c) *Survivor election provisions.* An individual applying for full retirement status under this section is subject to the survivor election provisions of subpart F of this part.

**§ 831.1732 Commencing date of composite retirement annuity.**

(a) The commencing date of the composite retirement annuity of a phased retiree who enters full retirement status is the day after separation.

(b) A phased retirement annuity terminates upon separation from service.

**Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement**

**§ 831.1741 Computation of phased retirement annuity.**

(a) Subject to adjustments described in paragraphs (b) and (c) of this section, a phased retiree's phased retirement annuity equals the product obtained by multiplying—

(1) The amount of annuity computed under 5 U.S.C. 8339, including any reduction for any unpaid deposit for non-deduction service performed before October 1, 1982, but excluding reduction for survivor annuity, that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under 5 U.S.C. 8336(a) or (b); by

(2) The phased retirement percentage for the phased retiree.

(b)(1) The monthly installment of annuity derived from the computation of the annuity under paragraph (a) of this section is reduced by any actuarial reduction for unpaid redeposit service in accordance with § 831.303(c) and (d).

(2) For the purpose of applying § 831.303(c) and (d) in paragraph (b)(1) of this section, the term ''time of retirement'' in § 831.303(c)(2) and (d)(2)(i) means the commencing date of the phased retiree's phased retirement annuity.

(c) The monthly installment of annuity derived from the computation of the annuity under paragraph (a) of this section is also subject to any offset under § 831.1005, adjusted by multiplying the offset that would otherwise apply had the phased retiree fully retired under 5 U.S.C. 8336(a) or (b) by the phased retirement percentage.

**§ 831.1742 Computation of composite annuity at final retirement.**

(a) Subject to the adjustment described in paragraph (c) of this section, a phased retiree's composite retirement annuity at final retirement equals the sum obtained by adding—

(1) The amount computed under § 831.1741(a) without adjustment under § 831.1741(b) and (c), increased by cost-of-living adjustments under § 831.1743(c); and

(2) The ''fully retired phased component'' computed under paragraph (b) of this section.

(b)(1) Subject to the requirements described in paragraphs (b)(2) and (b)(3) of this section, a ''fully retired phased component'' equals the product obtained by multiplying—

(i) The working percentage; by

(ii) The amount of an annuity computed under 5 U.S.C. 8339 that would have been payable at the time of full retirement if the individual had not elected phased retirement status and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity.

(2) In applying paragraph (b)(1)(ii) of this section, the individual must be deemed to have a full-time schedule during the period of phased retirement. The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. In determining the individual's deemed rate of basic pay during phased retirement, only basic pay for hours within the deemed full-time schedule will be considered, consistent with the definition of ''full-time'' in § 831.1702. Any premium pay creditable as basic pay for retirement purposes for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed rate of basic pay during phased retirement.

(3) In computing the annuity amount under paragraph (b)(1) of this section—

(i) The amount of unused sick leave equals the result of dividing the days of unused sick leave to the individual's credit at separation for full retirement by the working percentage; and

(ii) The reduction for any unpaid deposit for non-deduction service performed before October 1, 1982, is based on the amount of unpaid deposit, with interest computed to the commencing date of the composite annuity.

(c) The composite retirement annuity computed under paragraph (a) of this section is adjusted by applying any reduction for any survivor annuity benefit.

(d) The monthly installment derived from a composite retirement annuity computed under paragraph (a) of this section and adjusted under paragraph (c) is adjusted by any—

(1) Actuarial reduction applied to the phased retirement annuity under § 831.1741(b), increased by cost-of-living adjustments under § 831.1743(d); and

(2) Offset under § 831.1005 (i.e., the offset based on all service, including service during the phased retirement period, performed by the individual that was subject to mandatory Social Security coverage).

**§ 831.1743 Cost-of-living adjustments.**

(a) The phased retirement annuity under § 831.1741 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8340.

(b) A composite retirement annuity under § 831.1742 is increased by cost-of-living adjustments in accordance with 5

U.S.C. 8340, except that 5 U.S.C. 8340(c)(1) does not apply.

(c)(1) For the purpose of computing the amount of phased retirement annuity used in the computation under § 831.1742(a)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8340(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment is applied to increase the phased retirement annuity used in the computation under § 831.1742(a)(1).

(d)(1) For the purpose of computing the actuarial reduction used in the computation under § 831.1742(d)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8340(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment is applied to increase the actuarial reduction used in the computation under § 831.1742(d)(1).

(3) When applying each cost-of-living adjustment to the actuarial reduction used in the computation under § 831.1742(d)(1), the actuarial reduction is rounded up to the next highest dollar.

## Opportunity of a Phased Retiree To Pay a Deposit or Redeposit for Civilian or Military Service

### § 831.1751 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.

(a)(1) Any deposit an employee entering phased retirement status wishes to make for civilian service for which no retirement deductions were withheld (i.e., ''non-deduction'' service) must be paid within 30 days from the date OPM notifies the employee of the amount of the deposit, during the processing of the employee's application for phased retirement. The deposit amount will include interest under § 831.105, computed to the effective date of phased retirement.

(2) No deposit payment may be made by the phased retiree when entering full retirement status.

(3) As provided under § 831.1741(a)(1), for the computation of phased retirement annuity, the amount of any unpaid deposit for non-deduction service performed before October 1, 1982, including interest computed to the effective date of phased retirement annuity, will be the basis for reduction of the phased retirement annuity for such unpaid deposit.

(4) As provided under § 831.1742(b)(2), the amount of any unpaid deposit for non-deduction service performed before October 1, 1982, including interest computed to the commencing date of the composite annuity, will be the basis for reduction of the ''fully retired phased component'' for such unpaid deposit.

(b)(1) Any redeposit an employee entering phased retirement status wishes to make for civilian service for which retirement deductions were refunded to the employee must be paid within 30 days from the date OPM notifies the employee of the amount of the redeposit, during the processing of the employee's application for phased retirement. The redeposit amount will include interest under § 831.105 computed to the effective date of phased retirement.

(2) No redeposit payment may be made by the phased retiree when entering full retirement status.

(3) As provided under § 831.1741(b), for the computation of monthly installment of phased retirement annuity, the amount of any unpaid redeposit at phased retirement, or unpaid balance thereof, including interest computed to the effective date of phased retirement, will be the basis, along with the phased retiree's age, for any actuarial reduction of the monthly installment of phased retirement annuity for such unpaid redeposit.

(4) As provided under § 831.1742(d)(1), any actuarial reduction for unpaid redeposit service applied to the monthly installment of phased retirement annuity, as described in paragraph (b)(3) of this section and § 831.1741(b), is increased by cost-of-living adjustments and applied to the monthly installment derived from the composite retirement annuity.

### § 831.1752 Deposit for military service.

(a) A phased retiree who wishes to make a military service credit deposit under § 831.2104(a) for military service performed prior to entering phased retirement status must complete such a deposit no later than the day before the effective date of his or her phased employment and the commencing date of the phased retirement annuity. A military service credit deposit for military service performed prior to an individual's entry into phased retirement status cannot be made after the effective date of phased employment and the commencing date of phased retirement annuity.

(b) A phased retiree who wishes to make a military service credit deposit under § 831.2104(a) for military service performed after the effective date of phased employment and the commencing date of the phased retirement annuity and before the effective date of the composite retirement annuity (e.g., due to the call-up of the employee for active military service) must complete such a deposit no later than the day before the effective date of his or her composite retirement annuity.

### § 831.1753 Civilian and military service of an individual affected by an erroneous retirement coverage determination.

(a) For the purpose of crediting service for which actuarial reduction of annuity is permitted under § 831.303(d) for an employee who enters phased retirement, the deposit amounts under § 831.303(d) form the basis, along with the phased retiree's age, for any actuarial reduction of the phased retirement annuity for such unpaid deposits.

(b) No deposit payment for service described under § 831.303(d) may be made by the phased retiree when entering full retirement status.

(c) As provided under § 831.1741(b), the amount of any deposit under § 831.303(d) at the commencing date of the individual's phased retirement annuity, or unpaid balance thereof, including interest computed to the effective date of phased retirement annuity, will be the basis, along with the phased retiree's age, for any actuarial reduction of the phased retirement annuity for such unpaid deposit.

(d) As provided under § 831.1742(d)(1), any actuarial reduction for any unpaid deposit service under § 831.303(d) applied to the phased retirement annuity, as described in § 831.1741(b), is increased by cost-of-living adjustments and applied to the monthly installment derived from the composite retirement annuity.

## Death Benefits

### § 831.1761 Death of phased retiree during phased employment.

(a) For the purpose of 5 U.S.C. 8341—

(1) The death of a phased retiree is deemed to be a death in service of an employee; and

(2) The phased retirement period is deemed to have been a period of part-time employment with the work schedule described in § 831.1712(a)(1) and (b) for the purpose of determining survivor benefits. The part-time proration adjustment for the phased retirement period will be based upon the employee's officially established part-time work schedule, with no credit for extra hours worked. In determining the employee's deemed rate of basic pay

during the phased retirement period, only basic pay for hours within the employee's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(b) If a phased retiree elects not to make a deposit described in 5 U.S.C. 8334(d)(1), such that his or her annuity is actuarially reduced under 5 U.S.C. 8334(d)(2) and § 831.1741(b), and that individual dies in service as a phased retiree, the amount of any deposit upon which such actuarial reduction was to have been based will be deemed to have been fully paid.

**§ 831.1762 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.**

(a) For the purpose of 5 U.S.C. 8341, an individual who dies after separating from phased employment and before submitting an application for composite retirement annuity is deemed to have filed an application for full retirement status, and composite retirement annuity, with OPM.

(b) Unless an individual described in paragraph (a) of this section was reemployed with the Federal Government after separating from phased employment, the composite retirement annuity of an individual described in paragraph (a) of this section is deemed to have accrued from the day after separation through the date of death. Any composite annuity accrued during such period of time, minus any phased annuity paid during that period, will be paid as a lump-sum payment of accrued and unpaid annuity, in accordance with 5 U.S.C. 8342(c) and (f).

**§ 831.1763 Lump-sum credit.**

If an individual performs phased employment, the lump-sum credit will be reduced by any annuity that is paid or accrued during phased employment.

## Reemployment After Separation From Phased Retirement Status

**§ 831.1771 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.**

(a) Unless eligibility for annuity terminates under 5 U.S.C. 8344, a phased retiree who has been separated from employment for more than 3 days and who has entered full retirement status, but who has not submitted an application for composite retirement annuity, is deemed to be an annuitant receiving annuity from the Civil Service Retirement and Disability Fund during any period of employment in an appointive or elective position in the Federal Government.

(b) A phased retiree described in paragraph (a) whose entitlement to a composite retirement annuity terminates under 5 U.S.C. 8344 due to reemployment, is an employee effective upon reemployment. The individual is not entitled to a phased retirement annuity (i.e., phased retirement annuity does not resume) during the period of employment, and the individual's entitlement to a composite retirement annuity terminates effective on the date of employment.

## Mentoring

**§ 831.1781 Mentoring.**

(a) A phased retiree, other than an employee of the United States Postal Service, must spend at least 20 percent of his or her working hours in mentoring activities as defined by an authorized agency official. For purposes of this section, mentoring need not be limited to mentoring of an employee who is expected to assume the phased retiree's duties when the phased retiree fully retires.

(b) An authorized agency official may waive the requirement under paragraph (a) of this section in the event of an emergency or other unusual circumstances (including active duty in the armed forces) that, in the authorized agency official's discretion, would make it impracticable for a phased retiree to fulfill the mentoring requirement.

# PART 838—COURT ORDERS AFFECTING RETIREMENT BENEFITS

■ 14. The authority citation for part 838 continues to read as follows:

**Authority:** 5 U.S.C. 8347(a) and 8461(g). Subparts B, C, D, E, J, and K also issued under 5 U.S.C. 8345(j)(2) and 8467(b). Sections 838.221, 838.422, and 838.721 also issued under 5 U.S.C. 8347(b).

■ 15. Amend § 838.103 as follows:

■ a. Revise the definitions of ''employee annuity'', ''employee annuity'', ''gross annuity'', ''net annuity'', ''retiree'', and ''self-only annuity'';

■ b. Add the definitions of ''composite retirement annuity'', ''phased retiree'', ''phased retirement annuity'', ''phased retirement status,'' and ''retirement'' in alphabetical order.

**§ 838.103 Definitions.**

* * * * *

*Composite retirement annuity* means the annuity computed when a phased retiree attains full retirement status.

* * * * *

*Employee* means an employee or Member covered by CSRS or FERS and a phased retiree as defined under this part.

*Employee annuity* means the recurring payments under CSRS or FERS made to a retiree, the recurring phased retirement annuity payments under CSRS or FERS made to a phased retiree in phased retirement status, and recurring composite retirement annuity payments under CSRS or FERS made to a phased retiree when he or she attains full retirement status. *Employee annuity* does not include payments of accrued and unpaid annuity after the death of a retiree or phased retiree under 5 U.S.C. 8342(g) or 8424(h).

* * * * *

*Full retirement* status means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity, as provided under subpart Q of 5 CFR 831 or 5 CFR 848.

*Gross annuity* means the amount of monthly annuity payable to a retiree or phased retiree after reducing the self-only annuity to provide survivor annuity benefits, if any, but before any other deduction. Unless the court order expressly provides otherwise, *gross annuity* also includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

* * * * *

*Net annuity* means the amount of monthly annuity payable to a retiree or phased retiree after deducting from the gross annuity any amounts that are—

(1) Owed by the retiree to the United States;

(2) Deducted for health benefits premiums under 5 U.S.C.8906 and 5 CFR 891.401 and 891.402;

(3) Deducted for life insurance premiums under 5 U.S.C. 8714a(d);

(4) Deducted for Medicare premiums;

(5) Properly withheld for Federal income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents he or she was entitled to claim;

(6) Properly withheld for State income tax purposes, if the amounts withheld are not greater than they would be if the retiree claimed all dependents he or she was entitled to claim; or

(7) Already payable to another person based on a court order acceptable for processing or a child abuse judgment enforcement order.

Unless the court order expressly provides otherwise, *net annuity* also

includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

*Phased employment* means the less-than-full-time employment of a phased retiree, as provided under 5 CFR part 831, subpart Q, or part 848.

*Phased retiree* means a retirement-eligible employee who—

(1) With the concurrence of an authorized agency official, enters phased retirement status in accordance with 5 CFR part 831, subpart Q, or part 848; and

(2) Has not entered full retirement status;

For the purpose of this part, when the term *employee* is used it also refers to a *phased retiree.*

*Phased retirement annuity* means the annuity payable under 5 U.S.C. 8336a or 8412a, and 5 CFR part 831, subpart Q, or part 848, before full retirement.

*Phased retirement status* means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

* * * * *

*Retiree* means a former employee, including a phased retiree who has entered full retirement status, or a Member who is receiving recurring payments under CSRS or FERS based on his or her service as an employee or Member. *Retiree* does not include an employee receiving a phased retirement annuity or a person receiving an annuity only as a current spouse, former spouse, child, or person with an insurable interest.

*Retirement* means a retirement other than a phased retirement.

*Retires* means enters retirement other than a phased retirement.

*Self-only annuity* means the recurring unreduced payments under CSRS or FERS to a retiree with no survivor annuity payable to anyone. *Self-only annuity* also includes the recurring unreduced phased retirement annuity payments under CSRS or FERS to a phased retiree before any other deduction. Unless the court order expressly provides otherwise, *self-only annuity* also includes any lump-sum payments made to the retiree under 5 U.S.C. 8343a or 8420a.

* * * * *

**§ 838.136 [Removed]**

■ 16. Remove § 838.136.

■ 17. Amend § 838.211 by revising paragraph (a)(1) introductory text, redesignating paragraph (b) as paragraph (a)(4), and by adding new paragraph (b) to read as follows:

**§ 838.211 Amounts subject to court orders.**

(a)(1) Employee annuities other than phased retirement annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the employee annuity to the former employee have been met, including, but not limited to—

* * * * *

(b)(1) Phased retirement annuities are subject to court orders acceptable for processing only if all of the conditions necessary for payment of the phased retirement annuity to the phased retiree have been met, including, but not limited to—

(i) Entry of the employee into phased retirement status under 5 CFR part 831, subpart Q, or part 848 of this chapter, respectively;

(ii) Application for payment of the phased retirement annuity by the phased retiree; and

(iii) The phased retiree's entitlement to a phased retirement annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders directed at phased retirement annuities.

(3) OPM cannot pay a former spouse a portion of a phased retirement annuity before the employee annuity begins to accrue.

(4) Payment to a former spouse under a court order may not exceed the phased retirement annuity.

■ 18. Amend § 838.222 by revising paragraph (a)(2) introductory text and paragraphs (b), (c)(1)(ii) and (c)(2) introductory text, and paragraph (d) introductory text to read as follows:

**§ 838.222 OPM action on receipt of a court order acceptable for processing.**

(a) * * *

(2) The retiree or phased retiree—

* * * * *

(b) If OPM receives a court order acceptable for processing that is directed at an employee annuity but the employee has died, or if a retiree or phased retiree dies after payments from the retiree or phased retiree to a former spouse have begun, OPM will inform the former spouse that the employee, or retiree, or phased retiree has died and that OPM can only honor court orders dividing employee annuities during the lifetime of the retiree or phased retiree.

(c) * * *

(1) * * *

(ii) That benefits cannot begin to accrue until the employee retires, or enters phased retirement status;

* * * * *

(2) The employee, separated employee, retiree, or phased retiree—

* * * * *

(d) The failure of OPM to provide, or of the employee, separated employee, retiree, phased retiree or the former spouse to receive, the information specified in this section prior to the commencing date of a reduction or accrual does not affect—

* * * * *

■ 19. Revise § 838.232 to read as follows:

**§ 838.232 Suspension of payments.**

(a) Payments from employee annuities under this part will be discontinued whenever the employee annuity payments are suspended or terminated. If employee annuity payments to the retiree or phased retiree are restored, payments to the former spouse will also resume, subject to the terms of any court order acceptable for processing in effect at that time.

(b) Paragraph (a) of this section will not be applied to permit a retiree or phased retiree to deprive a former spouse of payment by causing suspension of payment of employee annuity.

■ 20. Amend § 838.233 by revising paragraph (d) to read as follows:

**§ 838.233 Termination of payments.**

* * * * *

(d) The last day of the month immediately preceding the month in which the retiree or phased retiree dies; or

* * * * *

■ 21. Amend § 838.237 by revising paragraphs (a) and (b)(4)to read as follows:

**§ 838.237 Death of the former spouse.**

(a) Unless the court order acceptable for processing expressly provides otherwise, the former spouse's share of an employee annuity terminates on the last day of the month immediately preceding the death of the former spouse, and the former spouse's share of employee annuity reverts to the retiree or phased retiree.

(b) * * *

(4) One or more of the retiree's or phased retiree's children as defined in 5 U.S.C. 8342(c) or 8424(d).

■ 22. Amend § 838.242 by revising paragraph (b) to read as follows:

**§ 838.242 Computing length of service.**

* * * * *

(b) Unused sick leave is counted as ''creditable service'' on the date of separation for an immediate CSRS or FERS annuity. The unused sick leave of

a phased retiree is counted as ''creditable service'' on the date of separation of the phased retiree to enter full retirement status. Unused sick leave is not apportioned over the time when earned.

■ 23. Amend § 838.305 by revising paragraph (e) introductory text to read as follows:

**§ 838.305 OPM computation of formulas.**

* * * * *

(e) A court order directed at employee annuity is not a court order acceptable for processing if the court order directs OPM to determine a rate of employee annuity that would require OPM to determine a salary or average salary, other than a salary or average salary actually used in computing the employee annuity, as of a date prior to the date of the employee's entry into phased retirement or separation and to adjust that salary for use in computing the former spouse share unless the adjustment is by—

* * * * *

■ 24. Revise § 838.306 to read as follows:

**§ 838.306 Specifying type of annuity for application of formula, percentage or fraction.**

(a) A court order directed at an employee annuity that states the former spouse's share of employee annuity as a formula, percentage, or fraction is not a court order acceptable for processing unless OPM can determine the type of annuity (i.e., phased retirement annuity, composite retirement annuity, net annuity, gross annuity, or self-only annuity) on which to apply the formula, percentage, or fraction.

(b) The standard types of annuity to which OPM can apply the formula, percentage, or fraction are phased retirement annuity of a phased retiree, or net annuity, gross annuity, or self-only annuity of a retiree. Unless the court order otherwise directs, OPM will apply to gross annuity the formula, percentage, or fraction directed at annuity payable to either a retiree or a phased retiree. Section 838.625 contains information on other methods of describing these types of annuity.

(c)(1) A court order may include provisions directed at:

(i) Phased retirement annuity payable to a phased retiree, to address the possibility that an employee will enter phased retirement status;

(ii) Composite retirement annuity payable to a phased retiree at entry into full retirement status, to address the possibility that an employee will enter phased retirement status and then enter full retirement status; and

(iii) Annuity payable to an employee who retires without having elected phased retirement status.

(2) To separately provide for division of phased retirement annuity or composite retirement annuity, a provision of a court order must expressly state that it is directed at ''phased retirement annuity'' or ''composite retirement annuity,'' and must meet the requirements of paragraph (a). That is, it must state the type of annuity to be divided (e.g., ''net phased retirement annuity''). If such a provision is unclear as to whether it is directed at gross, net, or self-only phased retirement annuity or composite retirement annuity, the provision will be applied to gross phased retirement annuity or gross composite retirement annuity, as described in paragraph (b) of this section.

(3) Unless a court order expressly states that phased retirement annuity or composite retirement annuity is not to be divided, a court order meeting the requirements of paragraph (a) of this section and that generally provides for division of annuity, without meeting the requirements of paragraph (c)(2) of this section, regarding the specific type of annuity being divided, will be applied to divide any employee annuity, including phased retirement annuity and composite retirement annuity.

■ 25. Revise § 838.612 to read as follows:

**§ 838.612 Distinguishing between annuities and contributions.**

(a) A court order that uses terms such as ''annuities,'' ''pensions,'' ''retirement benefits,'' or similar terms, without distinguishing between phased retirement annuity payable to a phased retiree, or composite retirement annuity payable to a phased retiree upon entry into full retirement status, and employee annuity payable to a retiree, satisfies the requirements of §§ 838.303(b)(2) and 838.502(b)(2) for purposes of dividing any employee annuity or a refund of employee contributions.

(b)(1) A court order using ''contributions,'' ''deductions,'' ''deposits,'' ''retirement accounts,'' ''retirement fund,'' or similar terms satisfies the requirements of § 838.502(b)(2) and may be used only to divide the amount of contributions that the employee has paid into the Civil Service Retirement and Disability Fund.

(2) Unless the court order specifically states otherwise, when an employee annuity is payable, a court order using the terms specified in paragraph (b)(1) of this section satisfies the requirements of § 838.303(b)(2) and awards the former spouse a benefit to be paid in equal monthly installments at 50 percent of the gross annuity beginning on the date the employee annuity commences or the date of the court order, whichever comes later, until the specific dollar amount is reached.

■ 26. Amend § 838.621 by revising paragraphs (a) and (c) to read as follows:

**§ 838.621 Pro rata share.**

(a) *Pro rata share* means one-half of the fraction whose numerator is the number of months of Federal civilian and military service that the employee performed during the marriage and whose denominator is the total number of months of Federal civilian and military service performed by the employee through the day before the effective date of phased retirement or separation for retirement, as applicable to the annuity calculation. In the computation of the division of phased retirement annuity and a composite retirement annuity, a pro rata share will be computed through the day before the effective date of an employee's phased retirement for the computation of the division of a phased retirement annuity and then recomputed for division of the composite retirement annuity under §§ 831.1742 and 848.502.

* * * * *

(c) A court order that awards a portion of an employee annuity as of a specified date before the employee's phased retirement or retirement awards the former spouse a pro rata share as defined in paragraph (a) of this section.

* * * * *

■ 27. Amend § 838.622 by revising paragraphs (a) and (c)(2) to read as follows:

**§ 838.622 Cost-of-living and salary adjustments.**

(a)(1) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as ''cost-of-living adjustments'' or ''Cola's'' occurring after the date of the decree but before the date of phased retirement or retirement provides increases equal to the adjustments described in or effected under 5 U.S.C. 8340 or 8462.

(2) A court order that awards adjustments to a former spouse's portion of an employee annuity stated in terms such as ''salary adjustments'' or ''pay adjustments'' occurring after the date of the decree provides increases equal to the adjustments described in or effected under 5 U.S.C. 5303, until the date the individual enters phased retirement status or retires.

* * * * *

(c) * * *

(2)(i) Except as provided in paragraph (b) of this section, a court order that requires OPM to compute a benefit as of a specified date before the employee's phased retirement or retirement, and specifically instructs OPM not to apply salary adjustments after the specified date in computing the former spouse's share of an employee annuity, provides that the former spouse is entitled to the application of cost-of-living adjustments after the date the individual enters phased retirement status or retires (if the employee does not enter phased retirement status first), in the manner described in § 838.241.

(ii) To award cost-of-living adjustments between a specified date and the employee's phased retirement or retirement, the court order must specifically instruct OPM to adjust the former spouse's share of the employee annuity by any cost-of-living adjustments occurring between the specified date and the date the employee enters phased retirement status or retires (if the employee does not enter phased retirement status first).

(iii) To prevent the application of cost-of-living adjustments that occur after the employee annuity begins to accrue to the former spouse's share of the employee annuity, the decree must either state the exact dollar amount of the award to the former spouse or specifically instruct OPM not to apply cost-of-living adjustments occurring after the date the employee enters phased retirement status or retires (if the employee does not enter phased retirement status first).

■ 28. Amend § 838.623 by revising paragraphs (c)(1), (c)(2) introductory text, (d)(1), and (d)(2) introductory text, and by adding paragraph (e) to read as follows:

**§ 838.623 Computing lengths of service.**

* * * * *

(c)(1) When a court order directed at employee annuity (other than a phased retirement annuity or a composite retirement annuity) contains a formula for dividing employee annuity that requires a computation of service worked as of a date prior to separation and using terms such as ''years of service,'' ''total service,'' ''service performed,'' or similar terms, the time attributable to unused sick leave will not be included.

(2) When a court order directed at employee annuity other than a phased retirement annuity or a composite retirement annuity contains a formula for dividing employee annuity that requires a computation of ''creditable service'' (or some other phrase using ''credit'' or its equivalent) as of a date prior to retirement, unused sick leave will be included in the computation as follows:

* * * * *

(d)(1) General language such as ''benefits earned as an employee with the U.S. Postal Service * * *'' provides only that CSRS or FERS retirement benefits are subject to division and does not limit the period of service included in the computation (i.e., service performed with other Government agencies will be included).

(2) To limit the computation of benefits other than a phased retirement annuity or a composite retirement annuity to a particular period of employment, the court order must—

* * * * *

(e) A court order directed at a phased retirement annuity or a composite retirement annuity cannot limit the computation and division of a phased retirement annuity or composite retirement annuity to a particular period of employment or service. A phased retirement annuity is based on an employee's service as of phased retirement and a ''fully retired phased component,'' described in §§ 831.1742 and 848.502, of a composite retirement annuity is based on a phased retiree's service as of his or her full retirement. A court order that attempts to limit the computation of a phased retirement annuity or a composite retirement annuity to a particular period of employment or service is not a court order acceptable for processing. If the former spouse's award of a portion of phased retirement annuity or a composite retirement annuity is to be limited, the limitation of the division must be accomplished in a manner other than by limiting the service to be used in the computation.

■ 29. Amend Appendix A to subpart F of 5 CFR part 838 by revising the table of contents, adding model paragraphs 212–217, and by revising model paragraph 232 and the introductory text for the 300 series paragraphs to read as follows:

## Model Paragraphs

## Appendix A to Subpart F of Part 838—Recommended Language for Court Orders Dividing Employee Annuities

* * * * *

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* * * * *

**¶¶ 212–217 Award of phased retirement annuity or composite retirement annuity.**

A court order may include an award directed at (1) phased retirement annuity payable to a phased retiree, to address the possibility that an employee will enter phased retirement status; (2) composite retirement annuity payable to a phased retiree at entry into full retirement status, to address the possibility that an employee will enter phased retirement status and then enter full retirement status; or (3) annuity payable to an employee who retires without having elected phased retirement status.

A general non-specific award will apply to any employee annuity payable, including phased retirement annuity and composite retirement annuity (*see* ¶¶ 201–211). For example, an award dividing employee annuity that uses terms such as ''annuities,'' ''pensions,'' ''retirement benefits,'' or similar general terms, would apply to all types of employee annuity.

To separately provide for division of phased retirement annuity or composite retirement annuity, a provision of a court order must expressly state that it is directed at ''phased retirement annuity'' or ''composite retirement annuity,'' and must indicate the share of employee annuity as a formula, percentage, or fraction. That is, it must state the type of annuity to be divided (e.g., ''net phased retirement annuity''). If such a provision is unclear as to whether it is directed at gross, net, or self-only phased retirement annuity or composite retirement annuity, the provision will be applied to gross phased retirement annuity or gross composite retirement annuity.

It should be noted that a former spouse survivor annuity cannot be awarded from a phased retirement annuity; therefore, a phased retirement annuity is not subject to reduction to provide a former spouse survivor annuity. As a consequence, an award dividing either ''self-only phased retirement annuity'' or a ''gross phased retirement annuity'' would be directed at identical annuities. However, a former spouse survivor annuity can be awarded from a composite retirement annuity payable to a phased retiree at entry into full retirement status (i.e., when the ''phased retiree'' enters full retirement status and becomes a ''retiree''); therefore, there would be a difference between an award of a share of ''self-only composite retirement annuity'' and an award of a share of ''gross composite retirement annuity.''

Due to the complexity of the benefits, care should be taken in drafting separate awards of phased retirement annuity or composite retirement annuity. It should also be noted, for example, that an award directed only at the division of phased retirement annuity or composite retirement annuity payable to a phased retiree will not be effective to divide annuity payable to an employee who retires in the usual manner, without having entered phased retirement status first. If separate awards of phased retirement annuity or composite retirement annuity are to be provided, consideration should be given to including provisions in the paragraph addressing the possibility that the employee may retire in the usual manner without entering phased retirement status before fully retiring. Similarly, if employee annuity is only to be awarded in the event the employee retires in the usual manner, without entering phased retirement status before fully retiring, consideration should be given to including specific language to that effect.

**¶ 212 Award of phased retirement annuity and composite retirement annuity while providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.**

Using the following paragraph will award phased retirement annuity and composite retirement annuity and provides for the possibility that the employee retires in the usual manner without entering phased retirement status:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly phased retirement annuity under the Civil Service Retirement System. When [employee] enters full retirement status and receives a composite retirement annuity, [former spouse] is awarded [insert language awarding fraction, formula, or 'pro rata share'] of [employee]'s monthly [insert ''gross,'' ''net'' or ''self-only''] composite retirement annuity under the Civil Service Retirement System. If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is entitled to [insert appropriate language from 200 series or 300 series paragraphs] under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

**¶ 213 Award of composite retirement annuity while providing for the possibility that the employee retires in the usual manner without entering phased retirement status, but not providing for award of phased retirement annuity.**

Using the following will award composite retirement annuity when an employee enters phased retirement status and subsequently enters full retirement status, and provides for the possibility that the employee retires in the usual manner without having entered phased retirement status; however, the paragraph will not award a phased retirement annuity when the employee enters phased retirement status:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status and subsequently enters full retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly composite retirement annuity under the Civil Service Retirement System. If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is entitled to [insert appropriate language from 200 series or 300 series paragraphs] under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is

directed to pay [former spouse]'s share directly to [former spouse].''

**¶ 214 Award of employee annuity when the employee retires in the usual manner, without providing for the possibility that the employee enters phased retirement status and full retirement status.**

Use the following paragraph if the former spouse is only to be awarded a portion of the employee's annuity when the employee retires in the usual manner, without an award of a portion of the employee's phased retirement annuity or composite retirement annuity in the event that the employee enters phased retirement status. It should be noted, however, that if this conditional clause provided below is used in an appropriate 200 or 300 series paragraph without a conditional award of a portion of phased retirement annuity and composite retirement annuity, the former spouse will not receive a portion of the employee's annuity if the employee enters phased retirement status and then enters full retirement status:

''If [employee] retires from employment with the United States Government without entering phased retirement status before fully retiring, [former spouse] is awarded [insert remaining language for the paragraph from the appropriate 200 series or 300 series]. . . The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

**¶ 215 Award of phased retirement annuity and composite retirement annuity, without providing for the possibility that the employee retires in the usual manner without having entered phased retirement status and full retirement status.**

Use the following paragraph to award only phased retirement annuity and composite retirement annuity. This paragraph will not award benefits if the employee retires in the usual manner without entering phased retirement status:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s monthly [insert 'gross,' 'net,' or 'self-only'] phased retirement annuity under the Civil Service Retirement System. When [employee] enters full retirement status and receives a composite retirement annuity, [former spouse] is awarded [insert language awarding percentage, fraction, formula, or pro rata share] of [employee]'s monthly [insert ''gross,'' ''net'' or ''self-only''] composite retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

**¶ 216 Award of only phased retirement annuity, but not awarding composite retirement annuity when the employee enters full retirement status or providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.**

Using the following will award only phased retirement annuity. This paragraph will not award composite retirement annuity when the employee enters full retirement status nor will it provide for the possibility that the employee retires in the usual manner without entering phased retirement status. It should be noted that if this paragraph is used, the former spouse will not receive a portion of the employee's annuity benefits if the employee retires in the usual manner without entering phased retirement status first:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly phased retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

**¶ 217 Award of only composite retirement annuity when employee enters full retirement status following phased retirement, but not awarding phased retirement annuity when the employee enters phased retirement status or providing for the possibility that the employee retires in the usual manner without entering phased retirement status before fully retiring.**

Using the following will award only composite retirement annuity when the employee enters full retirement status following phased retirement. This paragraph will not award phased retirement annuity when the employee enters phased retirement status nor will it provide for the possibility that the employee retires in the usual manner without entering phased retirement status. It should be noted that if this paragraph is used, the former spouse will not receive a portion of the employee's annuity benefits if the employee retires without entering full retirement status from phased retirement status:

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. If [employee] enters phased retirement status and enters full retirement status, the [former spouse] is entitled to a [insert description of percentage, fraction, formula, or insert term 'pro rata share'] of [employee]'s [insert 'gross,' 'net,' or 'self-only'] monthly composite retirement annuity under the Civil Service Retirement System. The marriage began on [insert date]. The United States Office of Personnel Management is directed to pay [former spouse]'s share directly to [former spouse].''

**¶ 218–230 [Reserved]**

**¶¶ 231–232 Awarding or excluding COLA's.**

* * * * *

**¶ 232 Excluding COLA's on awards other than fixed monthly amounts.**

Using the following paragraph will prevent application of COLA's to a former spouse's share of an employee annuity in cases where the former spouse has been awarded a percentage, fraction or pro rata share of the employee annuity, rather than a fixed dollar amount.

''[Employee] is (or will be) eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. [Insert language for computing the former spouse's share from ¶ 202, ¶ 203, ¶ 204, ¶ 211, or ¶¶ 212–217 of this appendix.] The United States Office of Personnel Management is directed to determine the amount of [former spouse]'s share on the date [insert 'when [employee] retires or enters phased retirement status' or if the employee has not retired or entered phased retirement status, or 'of this order' if the employee is already retired or entered phased retirement status] and not to apply COLA's to that amount. The United States Office of Personnel Management is directed to

pay [former spouse]'s share directly to [former spouse].''

*300 Series—Type of Annuity*

Awards of employee annuity to a former spouse (other than awards of fixed dollar amounts) must specify whether OPM will use the ''phased retirement annuity,'' ''composite retirement annuity,'' ''gross annuity,'' ''net annuity,'' or ''self-only annuity'' as defined in § 838.103 (see also § 838.306) in determining the amount of the former spouse's entitlement. The court order may contain a formula that has the effect of creating other types of annuity, but the court order may only do this by providing a formula that starts from ''phased retirement annuity,'' ''composite retirement annuity,'' ''gross annuity,'' ''net annuity,'' or ''self-only annuity'' as defined in § 838.103.

* * * * *

■ 30. Amend § 838.803 by adding paragraph (c) to read as follows:

**§ 838.803 Language not acceptable for processing.**

* * * * *

(c) A court order that attempts to award a former spouse survivor annuity based on a phased retirement annuity or to reduce a phased retirement annuity to provide survivor benefits is not a court order acceptable for processing.

■ 31. Amend § 838.806 by revising paragraph (d)(2) to read as follows:

**§ 838.806 Amended court orders.**

* * * * *

(d) * * *

(2) The effective commencing date for the employee's annuity other than the commencing date of a phased retirement annuity.

* * * * *

■ 32. Amend § 838.807 by revising paragraphs (a), (b)(1), (b)(2), adding paragraph (b), and revising paragraph (c) to read as follows:

**§ 838.807 Cost must be paid by annuity reduction.**

(a) A court order awarding a former spouse survivor annuity is not a court order acceptable for processing unless it permits OPM to collect the annuity reduction required by 5 U.S.C. 8339(j)(4) or 8419 from annuity paid by OPM to a retiree. OPM will not honor a court order that provides for the retiree or former spouse to pay OPM the amount of the annuity reduction by any other means.

(b) * * *

(1) By reduction of the former spouse's entitlement under a court order acceptable for processing that is directed at employee annuity payable to a retiree;

(2) By reduction of the employee annuity payable to a retiree; or

(3) By actuarial reduction of the former spouse survivor annuity in the event the reduction of the employee annuity is not made for any reason prior to the death of the annuitant.

(c) Unless the court order otherwise directs, OPM will collect the annuity reduction required by 5 U.S.C. 8339(j)(4) or 8419 from the employee annuity payable to a retiree.

■ 33. Amend § 838.1111 by revising paragraph (a)(1) introductory text, redesignating paragraph (b) as paragraph (c), by and adding new paragraph (b) to read as follows:

**§ 838.1111 Amounts subject to child abuse judgment enforcement orders.**

(a)(1) Employee annuities, other than phased retirement annuities, and refunds of employee contributions are subject to child abuse enforcement orders only if all of the conditions necessary for payment of the employee annuity or refund of employee contributions to the former employee have been met, including, but not limited to—

* * * * *

(b)(1) Phased retirement annuities are subject to child abuse enforcement orders only if all of the conditions necessary for payment of the phased retirement annuity to the phased retiree have been met, including, but not limited to—

(i) Entry of the employee into phased retirement status under subpart Q of part 831 of this chapter or part 848 of this chapter, respectively;

(ii) Application for payment of the phased retirement annuity by the phased retiree; and

(iii) The phased retiree's immediate entitlement to a phased retirement annuity.

(2) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under child abuse judgment enforcement orders.

(3) OPM cannot pay a child abuse creditor a portion of a phased retirement annuity before the employee annuity begins to accrue.

* * * * *

## PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

■ 34. The authority citation for part 841 continues to read as follows:

**Authority:** 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780.

■ 35. Amend § 841.102 as follows:

■ a. Add paragraph (b)(6);

■ b. Redesignate paragraphs (c)(6) through (11) as paragraphs (c)(7) through (12), and

■ c. Add new paragraph (c)(6).

The additions read as follows:

**§ 841.102 Regulatory structure for the Federal Employees Retirement System.**

* * * * *

(b) * * *

(6) Part 848 of this chapter contains information about phased retirement under FERS.

(c) * * *

(6) Part 850 of this chapter contains information about CSRS and FERS electronic retirement processing.

* * * * *

■ 36. Amend § 838.104 by revising paragraph (a) and paragraph (b) introductory text to read as follows:

**§ 841.104 Special terms defined.**

(a) Unless otherwise defined for use in any subpart, as used in connection with FERS (parts 841 through 850 of this chapter), terms defined in 5 U.S.C. 8401 have the same meanings assigned to them by that section.

(b) Unless otherwise defined for use in any subpart, as used in connection with FERS (parts 841 through 850 of this chapter)—

* * * * *

## PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 37. The authority citation for part 842 continues to read as follows:

**Authority:** 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat.

2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec.1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

■ 38. Amend § 842.402 by revising the definition of ''full-time service'' to read as follows:

**§ 842.402 Definitions.**

In this subpart—

*Full-time service* means service performed by an employee who has—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority);

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority);

(3) For a firefighter covered by 5 U.S.C. 5545b(b) who does not have a 40-hour basic workweek, a regular tour of duty averaging at least 106 hours per biweekly pay period; or

(4) A work schedule that is considered to be full-time by express provision of law, including a work schedule established for certain nurses under 38 U.S.C. 7456 or 7456A that is considered by law to be a full-time schedule for all purposes.

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## PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 39. The authority citation for part 843 continues to read as follows:

**Authority:** 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

■ 40. Amend § 843.202 by revising paragraph (b) to read as follows:

**§ 843.202 Eligibility for payment of the unexpended balance to a separated employee.**

* * * * *

(b)(1) For a retirement based on a separation before October 28, 2009, periods of service for which employee contributions have been refunded are not creditable service in determining whether the employee has sufficient service to have title to an annuity or for any other purpose.

(2) For a retirement based on a separation on or after October 28, 2009, periods of service for which employee contributions have been refunded are—

(i) Creditable service in determining whether the employee has sufficient service to have title to an annuity; and

(ii) Not creditable without deposit for any other purpose, except for average pay computation purposes.

■ 41. Add part 848 to read as follows:

## PART 848—PHASED RETIREMENT

**Subpart A—General Provisions**

Sec.
848.101 Applicability and purpose.
848.102 Definitions.
848.103 Implementing directives.

**Subpart B—Entering Phased Retirement**

848.201 Eligibility.
848.202 Working percentage and officially established hours for phased employment.
848.203 Application for phased retirement.
848.204 Effective date of phased employment and phased retirement annuity commencing date.
848.205 Effect of phased retirement.

**Subpart C—Returning to Regular Employment Status**

848.301 Ending phased retirement status to return to regular employment status.
848.302 Effective date of end of phased retirement status to return to regular employment status.
848.303 Effect of ending phased retirement status to return to regular employment status.

**Subpart D—Entering Full Retirement Status**

848.401 Application for full retirement status.
848.402 Commencing date of composite retirement annuity.

**Subpart E—Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement**

848.501 Computation of phased retirement annuity.
848.502 Computation of composite annuity at final retirement.
848.503 Cost-of-living adjustments.
848.503 Non-eligibility for annuity supplement.

**Subpart F—Opportunity of a Phased Retiree to Pay Deposit or Redeposit for Civilian or Military Service**

848.601 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.
848.602 Deposit for military service.

**Subpart G—Death Benefits**

848.701 Death of a phased retiree during phased employment.
848.702 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.
848.703 Lump-sum credit.

**Subpart H—Reemployment After Separation From Phased Retirement Status**

848.801 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

**Subpart I—Mentoring**

848.901 Mentoring.

**Authority:** 5 U.S.C. 8461; 5 U.S.C. 8412a.

### Subpart A—General Provisions

**§ 848.101 Applicability and purpose.**

This subpart contains the regulations implementing provisions of 5 U.S.C. 8412a authorizing phased retirement. This subpart establishes the eligibility requirements for making an election to enter phased retirement status, the procedures for making an election, the record-keeping requirements, and the methods to be used for certain computations not addressed elsewhere in parts 841–843 and 845.

**§ 848.102 Definitions.**

In this subpart—

*Authorized agency official* means—

(1) For the executive branch agencies, the head of an Executive agency as defined in 5 U.S.C. 105;

(2) For the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency;

(3) For the judicial branch, the Director of the Administrative Office of the U.S. Courts;

(4) For the Postal Service, the Postmaster General;

(5) For any other independent establishment that is an entity of the Federal Government, the head of the establishment; or

(6) An official who is authorized to act for an official named in paragraphs (1)–(5) in the matter concerned.

*Composite retirement annuity* means the annuity computed when a phased retiree attains full retirement status.

*Director* means the Director of the Office of Personnel Management.

*Full retirement status* means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity.

*Full-time* means—

(1) An officially established recurring basic workweek consisting of 40 hours within the employee's administrative workweek (as established under § 610.111 of this chapter or similar authority); or

(2) An officially established recurring basic work requirement of 80 hours per biweekly pay period (as established for employees with a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, or similar authority).

*Phased employment* means the less-than-full-time employment of a phased retiree.

*Phased retiree* means a retirement-eligible employee who—

(1) With the concurrence of an authorized agency official, enters phased retirement status; and

(2) Has not entered full retirement status;

*Phased retirement annuity* means the annuity payable under 5 U.S.C. 8412a before full retirement.

*Phased retirement percentage* means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent.

*Phased retirement period* means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment.

*Phased retirement status* means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity.

*Working percentage* has the meaning given that term in § 848.202(a).

#### § 848.103 Implementing directives.

The Director may prescribe, in the form he or she deems appropriate, such detailed procedures as are necessary to carry out the purpose of this subpart.

### Subpart B—Entering Phased Retirement

#### § 848.201 Eligibility.

(a) A retirement-eligible employee, as defined in paragraphs (b) and (c), may elect to enter phased retirement status if the employee has been employed on a full-time basis for not less than the 3-year period ending on the effective date of phased retirement status under § 848.203.

(b) Except as provided in paragraph (c) of this section, a retirement-eligible employee means an employee who, if separated from the service, would meet the requirements for retirement under subsection (a) or (b) of 5 U.S.C. 8412.

(c) A retirement-eligible employee does not include—

(1) A member of the Capitol Police or Supreme Court Police, or an employee occupying a law enforcement officer, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer position, except a customs and border protection officer who is exempt from mandatory separation and retirement under 5 U.S.C. 8325 pursuant to section 535(e)(2)(A) of Division E of the Consolidated Appropriations Act, 2008, Public Law 110–161;

(2) An individual eligible to retire under 5 U.S.C. 8412(d) or (e): or

(3) An employee covered by a special work schedule authority that does not allow for a regularly recurring part-time schedule, such as a firefighter covered by 5 U.S.C. 5545b or a nurse covered by 38 U.S.C. 7456 or 7456A.

#### § 848.202 Working percentage and officially established hours for phased employment.

(a) For the purpose of this subpart, *working percentage* means the percentage of full-time equivalent employment equal to the quotient obtained by dividing—

(1) The number of officially established hours per pay period to be worked by a phased retiree, as described in paragraph (b) of this section; by

(2) The number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b) The number of officially established hours per pay period to be worked by an employee in phased retirement status must equal one-half the number of hours the phased retiree would have been scheduled to work had the phased retiree remained in a full-time work schedule and not elected to enter phased retirement status. These hours make up the officially established part-time work schedule of the phased retiree and exclude any additional hours worked under § 848.205(j).

#### § 848.203 Application for phased retirement.

(a) To elect to enter phased retirement status, a retirement-eligible employee covered by § 848.201 must—

(1) Submit to an authorized agency official a written and signed request to enter phased employment, on a form prescribed by OPM;

(2) Obtain the signed written approval of an authorized agency official to enter phased employment; and

(3) File an application for phased retirement, in accordance with § 841.202.

(b) Except as provided in paragraph (c) of this section, an applicant for phased retirement may withdraw his or her application any time before the election becomes effective, but not thereafter.

(c) An applicant for phased retirement may not withdraw his or her application after OPM has received a certified copy of a court order (under part 581 or part 838 of this chapter) affecting the benefits.

(d)(1) An employee and an agency approving official may agree to a time limit to the employee's period of phased employment as a condition of approval of the employee's request to enter phased employment and phased retirement, or by mutual agreement after the employee enters phased employment status.

(2) To enter into such an agreement, the employee and the approving official must complete a written and signed agreement.

(3) The written agreement must include the following:

(i) The date the employee's period of phased employment will terminate;

(ii) A statement that the employee can request the approving official's permission to return to regular employment status at any time or within three days after the expiration of the agreement as provided in § 848.301. The agreement must also explain how returning to regular employment status would affect the employee, as described in §§ 848.301–302.

(iii) A statement that the employee has a right to elect to fully retire at any time as provided in § 848.401;

(iv) A statement that the employee may accept a new appointment at another agency, with or without the new agency's approval of phased employment, at any time before the expiration of the agreement or within 3 days of the expiration of the agreement; the agreement must also explain how accepting an appointment at a new agency as a regular employee would affect the employee, as described in §§ 848.301–302;

(v) An explanation that when the agreed term of phased employment ends, the employee will be separated from employment and that such separation will be considered voluntary, based on the written agreement; and

(vi) An explanation that if the employee is separated from phased employment and is not employed

within 3 days (i.e., the employee has a break in service of greater than 3 days), the employee will be deemed to have elected full retirement.

(4) The agency approving official and the employee may rescind an existing agreement, or enter into a new agreement to extend or reduce the term of phased employment agreed to in an existing agreement, by entering into a new written agreement meeting the requirements of this paragraph, before the expiration of the agreement currently in effect.

(e) An agency must establish written criteria that will be used to approve or deny applications for phased retirement before approving or denying applications for phased retirement.

**§ 848.204 Effective date of phased employment and phased retirement annuity commencing date.**

(a) Phased employment is effective the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 848.203(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

(b) The commencing date of a phased retirement annuity (i.e., the beginning date of the phased retirement period) is the first day of the first pay period beginning after phased employment is approved by an authorized agency official under § 848.203(a), or the first day of a later pay period specified by the employee with the authorized agency official's concurrence.

**§ 848.205 Effect of phased retirement.**

(a)(1) A phased retiree is deemed to be a full-time employee for the purpose of 5 U.S.C. chapter 89 and 5 CFR part 890 (related to health benefits), as required by 5 U.S.C. 8412a(i). The normal rules governing health benefits premiums for part-time employees in 5 U.S.C. 8906(b)(3) do not apply.

(2) A phased retiree is deemed to be receiving basic pay at the rate applicable to a full-time employee holding the same position for the purpose of determining a phased retiree's annual rate of basic pay used in calculating premiums (employee withholdings and agency contributions) and benefits under 5 U.S.C. chapter 87 and 5 CFR part 870 (dealing with life insurance), as required by 5 U.S.C. 8412a(o). The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. Only basic pay for hours within the deemed full-time schedule will be considered, consistent with 5 U.S.C. 8412a(o) and the definition of ''full-time'' in § 848.102. Any premium pay creditable as basic pay for life insurance purposes under 5 CFR 870.204 for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed annual rate of basic pay under this paragraph.

(b) A phased retiree may not be appointed to more than one position at the same time.

(c) A phased retiree may move to another position in the agency or another agency during phased retirement status only if the change would not result in a change in the working percentage. To move to another agency during phased retirement status and continue phased employment and phased retirement status, the phased retiree must submit a written and signed request and obtain the signed written approval, in accordance with § 848.203(a)(1) and (2), of the authorized agency official to which the phased retiree is moving. Notwithstanding the provisions of § 848.204, if the authorized agency official approves the request, the phased retiree's phased employment and phased retirement status will continue without interruption at the agency to which the phased retiree moves. If the authorized agency official at the agency to which the phased retiree moves does not approve the request, phased employment and phased retirement status terminates in accordance with § 848.302(b).

(d) A phased retiree may be detailed to another position or agency if the working percentage of the position to which detailed is the same as the working percentage of the phased retiree's position of record.

(e) A retirement-eligible employee who makes an election under this subpart may not elect an alternative annuity under 5 U.S.C. 8420a.

(f) If the employee's election of phased retirement status becomes effective, the employee is barred from electing phased retirement status again. Ending phased retirement status or entering full retirement status does not create a new opportunity for the individual to elect phased retirement status.

(g) With the exception of § 841.803(f), a phased retiree is deemed to be an annuitant for the purpose of subpart H of 5 CFR part 841.

(h) A phased retiree is deemed to be an annuitant for the purpose of subpart J of 5 CFR part 841.

(i) Except as otherwise expressly provided by law or regulation, a phased retiree is treated as any other employee on a part-time tour of duty for all other purposes.

(j)(1) A phased retiree may not be assigned hours of work in excess of the officially established part-time schedule (reflecting the working percentage), except under the conditions specified in paragraph (j)(2) of this section.

(2) An authorized agency official may order or approve a phased retiree to perform hours of work in excess of the officially established part-time schedule only in rare and exceptional circumstances meeting all of the following conditions:

(i) The work is necessary to respond to an emergency posing a significant, immediate, and direct threat to life or property;

(ii) The authorized agency official determines that no other qualified employee is available to perform the required work;

(iii) The phased retiree is relieved from performing excess work as soon as reasonably possible (e.g., by management assignment of work to other employees); and

(iv) When an emergency situation can be anticipated in advance, agency management made advance plans to minimize any necessary excess work by the phased retiree.

(3) Employing agencies must inform each phased retiree and his or her supervisor of—

(i) The limitations on hours worked in excess of the officially established part-time schedule;

(ii) The requirement to maintain records documenting that the exceptions met all required conditions;

(iii) The fact that, by law and regulation, any basic pay received for hours outside the employee's officially established part-time work schedule (as described in § 848.202(a)(1) and (b)) is subject to retirement deductions and agency contributions, in accordance with 5 U.S.C. 8412a(d), but is not used in computing retirement benefits; and

(iv) The fact that, by law and regulation, any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), will not be subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8412a(d), and that any such premium pay received will not be included in computing retirement benefits.

(4) Employing agencies must maintain records documenting that exceptions

granted under paragraph (j)(2) of this section meet the required conditions. These records must be retained for at least 6 years and be readily available to auditors. OPM may require periodic agency reports on the granting of exceptions and of any audit findings.

(5) If OPM finds that an agency (or subcomponent) is granting exceptions that are not in accordance with the requirements of this paragraph (j), OPM may administratively withdraw the agency's (or subcomponent's) authority to grant exceptions and require OPM approval of any exception.

(6) If OPM finds that a phased retiree has been working a significant amount of excess hours beyond the officially established part-time schedule to the degree that the intent of the phased retirement law is being undermined, OPM may require that the agency end the individual's phased retirement by unilateral action, notwithstanding the normally established methods of ending phased retirement. This finding does not need to be based on a determination that the granted exceptions failed to meet the required conditions in paragraph (j)(2) of this section. With the ending of an individual's phased retirement, that individual must be returned to regular employment status on the same basis as a person making an election under § 848.301—unless that individual elects to fully retire as provided under § 848.401.

(7) A phased retiree must be compensated for excess hours of work in accordance with the normally applicable pay rules.

(8) Any premium pay received for overtime work or hours outside the full-time schedule that would otherwise be basic pay for retirement, such as customs officer overtime pay under 19 U.S.C. 267(a), is not subject to retirement deductions or agency contributions, in accordance with 5 U.S.C. 8412a(d).

## Subpart C—Returning to Regular Employment Status

### § 848.301 Ending phased retirement status to return to regular employment status.

(a) *Election to end phased retirement status to return to regular employment status.* (1) A phased retiree may elect, with the permission of an authorized agency official, to end phased employment at any time to return to regular employment status. The election is deemed to meet the requirements of 5 U.S.C. 8412a(g) regardless of the employee's work schedule. The employee is not subject to any working percentage limitation (i.e., full-time, 50 percent of full-time, or any other working percentage) upon electing to end phased retirement status.

(2) To elect to end phased retirement status to return to regular employment status, a phased retiree must—

(i) Submit to an authorized agency official, on a form prescribed by OPM, a written and signed request to end phased retirement status to return to regular employment status; and

(ii) Obtain the signed written approval of an authorized agency official for the request.

(3) An employee may cancel an approved election to end phased retirement status to return to regular employment status by submitting a signed written request to the agency and obtaining the approval of an authorized agency official before the effective date of return to regular employment status.

(4) The employing agency must notify OPM that the employee's phased retirement status has ended by submitting to OPM a copy of the completed election to end phased retirement status to return to regular employment status within 15 days of its approval.

(b) *Mandated return to regular employment status.* A phased retiree may be returned to regular employment status as provided under § 848.205(j)(6).

(c) *Bar on reelection of phased retirement.* Once an election to end phased retirement status to return to regular employment status is effective, the employee may not reelect phased retirement status.

### § 848.302 Effective date of end of phased retirement status to return to regular employment status.

(a)(1) Except as provided in paragraph (b) of this section, if a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 848.301 on any date on or after the first day of a month through the fifteenth day of a month, the phased retiree's resumption of regular employment status is effective the first day of the first full pay period of the month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(2) If a request to end phased retirement status to return to regular employment status is approved by an authorized agency official under § 848.301 on any date on or after the sixteenth day of a month through the last day of a month, the phased retiree's resumption of regular employment status is effective on the first day of the first full pay period of the second month following the month in which the election to end phased retirement status to return to regular employment status is approved.

(3) The phased retirement annuity terminates on the date determined under paragraph (a)(1) or (2) of this section.

(b) When a phased retiree moves from the agency that approved his or her phased employment and phased retirement status to another agency and the authorizing official at the agency to which the phased retiree moves does not approve a continuation of phased employment and phased retirement status, phased employment and phased retirement status terminates when employment ends at the current employing agency.

### § 848.303 Effect of ending phased retirement status to return to regular employment status.

(a) After phased retirement status ends under § 848.302, the employee's rights under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, are determined based on the law in effect at the time of any subsequent separation from service.

(b) After an individual ends phased retirement status to return to regular employment status, for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, at the time of the subsequent separation from service, the phased retirement period will be treated as if it had been a period of part-time employment with the work schedule described in § 848.202(a)(1) and (b). The part-time proration adjustment for the phased retirement period will be based upon the individual's officially established part-time work schedule, with no credit for extra hours worked. In determining the individual's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the individual's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

(c) The restrictions in §§ 848.601 and 848.602 regarding when an individual must complete a deposit for civilian service, a redeposit for civilian service, or a deposit for military service do not apply when a phased retiree ends phased retirement status to return to regular employment status under this section.

## Subpart D—Entering Full Retirement Status

### § 848.401 Application for full retirement status.

(a) *Election of full retirement.* (1) A phased retiree may elect to enter full retirement status at any time by submitting to OPM an application for full retirement in accordance with § 841.202. This includes an election made under § 848.205(j)(6) in lieu of a mandated return to regular employment status. Upon making such an election, a phased retiree is entitled to a composite retirement annuity.

(2) A phased retiree may cancel an election of full retirement status and withdraw an application for full retirement by submitting a signed written request with the agency and obtaining the approval of an authorized agency official before the commencing date of the composite retirement annuity.

(b) *Deemed election of full retirement.* A phased retiree who is separated from phased employment for more than 3 days enters full retirement status. The individual's composite retirement annuity will begin to accrue on the commencing date of the composite annuity, as provided in § 848.402, and payment will be made after he or she submits an application in accordance with § 841.202 for the composite retirement annuity.

(c) *Survivor election provisions.* An individual applying for full retirement status under this section is subject to the survivor election provisions of subpart F of 5 CFR 842.

### § 848.402 Commencing date of composite retirement annuity.

(a) The commencing date of the composite retirement annuity of a phased retiree who enters full retirement status is the day after separation.

(b) A phased retirement annuity terminates upon separation from service.

## Subpart E—Computation of Phased Retirement Annuity at Phased Retirement and Composite Retirement Annuity at Full Retirement

### § 848.501 Computation of phased retirement annuity.

A phased retiree's phased retirement annuity equals the product obtained by multiplying (1) the amount of annuity computed under 5 U.S.C. 8415, excluding reduction for survivor annuity, that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement, the phased retiree had separated from service and retired under 5 U.S.C. 8412(a) or (b), by (2) the phased retirement percentage for the phased retiree.

### § 848.502 Computation of composite annuity at final retirement.

(a) Subject to the adjustment described in paragraph (c) of this section, a phased retiree's composite retirement annuity at final retirement equals the sum obtained by adding—

(1) The amount computed under § 848.501(a), increased by cost-of-living adjustments under § 848.503(c); and

(2) The ''fully retired phased component'' computed under paragraph (b) of this section.

(b)(1) Subject to the requirements described in paragraphs (b)(2) and (b)(3) of this section, a ''fully retired phased component'' equals the product obtained by multiplying—

(i) The working percentage; by

(ii) The amount of an annuity computed under 5 U.S.C. 8415 that would have been payable at the time of full retirement if the individual had not elected phased retirement status and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity.

(2) In applying paragraph (b)(1)(ii) of this section, the individual must be deemed to have a full-time schedule during the period of phased retirement. The deemed full-time schedule will consist of five 8-hour workdays each workweek, resulting in a 40-hour workweek. In determining the individual's deemed rate of basic pay during phased retirement, only basic pay for hours within the deemed full-time schedule will be considered, consistent with the definition of ''full-time'' in § 848.102. Any premium pay creditable as basic pay for retirement purposes for overtime work or hours outside the full-time schedule that an employee was receiving before phased retirement, such as standby duty pay under 5 U.S.C. 5545(c)(1) or customs officer overtime pay under 19 U.S.C. 267(a), may not be considered in determining a phased retiree's deemed rate of basic pay during phased retirement.

(3) In computing the annuity amount under paragraph (b)(1) of this section, the amount of unused sick leave credit equals the result of dividing the applicable percentage under 5 U.S.C. 8415(l) of the days of unused sick leave to the employee's credit at separation for full retirement, by the working percentage.

(c) The composite retirement annuity computed under paragraph (a) of this section is adjusted by applying any reduction for any survivor annuity benefit.

### § 848.503 Cost-of-living adjustments.

(a) The phased retirement annuity under § 848.501 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8462.

(b) A composite retirement annuity under § 848.502 is increased by cost-of-living adjustments in accordance with 5 U.S.C. 8462, except that 5 U.S.C. 8462(c)(1) does not apply.

(c)(1) For the purpose of computing the amount of phased retirement annuity used in the computation under § 848.502(a)(1), the initial cost-of-living adjustment applied is prorated in accordance with 5 U.S.C. 8462(c)(1).

(2) If the individual enters full retirement status on the same day as the effective date of a cost-of-living adjustment (usually December 1st), that cost-of-living adjustment, if applicable under 5 U.S.C. 8462, is applied to increase the phased retirement annuity used in the computation under § 848.502(a)(1).

### § 848.504 Non-eligibility for annuity supplement.

A phased retiree is not eligible to receive an annuity supplement under 5 U.S.C. 8421.

## Subpart F—Opportunity of a Phased Retiree To Pay Deposit or Redeposit for Civilian or Military Service

### § 848.601 Deposit for civilian service for which no retirement deductions were withheld and redeposit for civilian service for which retirement deductions were refunded to the individual.

Any deposit under § 842.304 and § 842.305, or redeposit under 5 U.S.C. 8422(i), that an employee entering phased retirement wishes to make for civilian service must be paid within 30 days from the date OPM notifies the employee of the amount of the deposit or redeposit, during the processing of the employee's application for phased retirement. The deposit or redeposit amount will include interest, computed to the effective date of phased retirement. No deposit or redeposit payment may be made by the phased retiree when entering full retirement status.

### § 848.602 Deposit for military service.

(a) A phased retiree who wishes to make a military service credit deposit under § 842.307 for military service performed prior to entering phased retirement status must complete such a

deposit no later than the day before the effective date of his or her phased employment and the commencing date of the phased retirement annuity. A military service credit deposit for military service performed prior to an individual's entry into phased retirement status cannot be made after the effective date of phased employment and the commencing date of phased retirement annuity.

(b) A phased retiree who wishes to make a military service credit deposit under § 842.307 for military service performed after the effective date of phased employment and the commencing date of phased retirement annuity and before the effective date of the composite retirement annuity (e.g., due to the call-up of the employee for active military service) must complete such a deposit no later than the day before the effective date of his or her composite retirement annuity.

## Subpart G—Death Benefits

### § 848.701 Death of phased retiree during phased employment.

(a) For the purpose of 5 U.S.C. chapter 84, subchapter IV—

(1) The death of a phased retiree is deemed to be a death in service of an employee; and

(2) The phased retirement period is deemed to have been a period of part-time employment with the work schedule described in § 848.202(a)(1) and (b) for the purpose of determining survivor benefits. The part-time proration adjustment for the phased retirement period will be based upon the employee's officially established part-time work schedule, with no credit for extra hours worked. In determining the employee's deemed rate of basic pay during the phased retirement period, only basic pay for hours within the employee's officially established part-time work schedule may be considered. No pay received for other hours during the phased retirement period may be included as part of basic pay for the purpose of computing retirement benefits, notwithstanding the normally applicable rules.

### § 848.702 Death of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

(a) For the purpose of 5 U.S.C. chapter 84, subchapter IV, an individual who dies after separating from phased employment and before submitting an application for composite retirement annuity is deemed to have filed an application for composite retirement annuity with OPM.

(b) The composite retirement annuity of a phased retiree described in paragraph (a) of this section is deemed to have accrued from the day after separation through the date of death. Any unpaid composite annuity accrued during such period, minus any phased retirement annuity paid during that period, will be paid as a lump-sum payment of accrued and unpaid annuity, in accordance with 5 U.S.C. 8424(d) and (g).

### § 848.703 Lump-sum credit.

If an individual performs phased employment, the lump-sum credit as defined in 5 U.S.C. 8401(19) will be reduced by any annuity that is paid or accrued during phased employment.

## Subpart H—Reemployment After Separation from Phased Retirement Status

### § 848.801 Reemployment of an individual who has separated from phased employment and who dies before submitting an application for a composite retirement annuity.

A phased retiree who has been separated from employment for more than 3 days and who has entered full retirement status, but who has not submitted an application for composite retirement annuity, is deemed to be an annuitant receiving annuity from the Civil Service Retirement and Disability Fund during any period of employment in an appointive or elective position in the Federal Government.

## Subpart I—Mentoring

### § 848.901 Mentoring.

(a) A phased retiree, other than an employee of the United States Postal Service, must spend at least 20 percent of his or her working hours in mentoring activities as defined by an authorized agency official. For purposes of this section, mentoring need not be limited to mentoring of an employee who is expected to assume the phased retiree's duties when the phased retiree fully retires.

(b) An authorized agency official may waive the requirement under paragraph (a) of this section in the event of an emergency or other unusual circumstances (including active duty in the armed forces) that, in the authorized agency official's discretion, would make it impracticable for a phased retiree to fulfill the mentoring requirement.

## PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 42. The authority citation for part 870 continues to read as follows:

**Authority:** 5 U.S.C. 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104–106, 110 Stat. 521;

■ 43. Amend § 870.101 by revising the definition of ''date of retirement'' to read as follows:

### § 870.101 Definitions.

* * * * *

*Date of retirement,* as used in 5 U.S.C. 8706(b)(1)(A), means the starting date of annuity. For phased retirees, as defined in 5 U.S.C. 8336a and 8412a, the date of retirement is the date the individual enters full retirement status.

* * * * *

■ 44. Amend § 870.204 by adding paragraph (h) to read as follows:

### § 870.204 Annual rates of pay.

* * * * *

(h) Notwithstanding any other provision of this section, the annual pay for a phased retiree, as defined in 5 U.S.C. 8336a and 8412a, is deemed to be the rate of a full-time employee in the position to which the phased retiree is appointed, as determined under 5 CFR 831.1715(a)(2) or 848.205(a)(2), as applicable.

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 45. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 46. Amend § 890.101 by revising the definition of ''immediate annuity'' to read as follows:

**§ 890.101 Definitions; time computations.**

* * * * *

*Immediate annuity* means an annuity which begins to accrue not later than 1 month after the date enrollment under a health benefits plan would cease for an employee or member of family if he or she were not entitled to continue enrollment as an annuitant. Notwithstanding the foregoing, an annuity which commences on the birth of the posthumous child of an employee or annuitant is an immediate annuity. For an individual who separates from service upon meeting the requirements for an annuity under § 842.204(a)(1) of this chapter, immediate annuity includes an annuity for which the commencing date is postponed under § 842.204(c). For phased retirees, as defined in 5 U.S.C. 8336a and 8412a, a composite retirement annuity is an immediate annuity.

* * * * *

■ 47. Amend § 890.501 by adding paragraph (h) to read as follows:

**§ 890.501 Government contributions.**

* * * * *

(h) Notwithstanding 5 U.S.C. 8906, the Government contribution for phased retirees, as defined in 5 U.S.C. 8336a and 8412a, is the same as that for employees and annuitants as fixed by paragraphs (a) and (b) of this section.

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Part VI

## Department of Education

34 CFR Part 685

William D. Ford Federal Direct Loan Program; Proposed Rule

## DEPARTMENT OF EDUCATION

### 34 CFR Part 685

**[Docket ID ED–2014–OPE–0082]**

**RIN 1840–AD17**

## William D. Ford Federal Direct Loan Program

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program. The Secretary is proposing to amend these regulations to strengthen and improve the administration of the Federal Direct PLUS Loan Program authorized under title IV of the Higher Education Act of 1965, as amended (HEA).

**DATES:** We must receive your comments on or before September 8, 2014.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the U.S. Department of Education (the Department) to electronically search and copy certain portions of your submissions.

- *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?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Gaina, U.S. Department of Education, 1990 K Street NW., Room 8055, Washington, DC 20006–8502.

**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:** Brian Smith or Pamela Moran at (202) 502–7551 or (202) 502–7732 or by email at: *Brian.Smith@ed.gov* or *Pamela.Moran@ed.gov.*

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:**

*Executive Summary:*

Purpose of This Regulatory Action: These proposed regulations would update the standard for determining if a potential parent or student borrower has an adverse credit history for purposes of eligibility for a Direct PLUS Loan (PLUS loan). Specifically, the proposed regulations would amend the definition of ''adverse credit history'' and require PLUS loan counseling for a parent or student with an adverse credit history who is approved for a PLUS loan as a result of the Secretary's determination that extenuating circumstances exist. The current regulations governing adverse credit history determinations have not been updated since the Direct Loan Program was established in 1994. The proposed regulations would amend the current regulations to reflect programmatic and economic changes that have occurred since 1994.

Summary of the Major Provisions of This Regulatory Action: The proposed regulations would—

- Revise the student PLUS loan borrower eligibility criteria to state more clearly that the PLUS loan adverse credit history requirements apply to student as well as parent PLUS loan borrowers.
- Add definitions of the terms ''charged off'' and ''in collection'' for purposes of determining whether an applicant for a PLUS loan has an adverse credit history.
- Specify that a PLUS loan applicant has an adverse credit history if the applicant has one or more debts with a total combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.
- Provide that the combined outstanding balance threshold of $2,085 may be adjusted over time on a basis determined by the Secretary.
- Revise the provision that specifies the types of documentation the Secretary may accept as a basis for determining that extenuating circumstances exist for a PLUS loan applicant who is determined to have an adverse credit history.
- Specify that an applicant for a PLUS loan who is determined to have an adverse credit history but who documents to the Secretary's satisfaction that extenuating circumstances exist must complete PLUS loan counseling offered by the Secretary before receiving the PLUS loan.

Please refer to the *Summary of Proposed Changes* section of this notice of proposed rulemaking (NPRM) for more details on the major provisions contained in this NPRM.

*Costs and Benefits:* As further detailed in the *Regulatory Impact Analysis* section of this document, the proposed regulations would affect applicants for parent and student PLUS loans by modifying the standard for a determination of an adverse credit history. In particular, a student or parent would be considered to have an adverse credit history if the student or parent has one or more debts with a combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.

The proposed regulations would also require that an applicant for a PLUS loan who is determined to have an adverse credit history but who documents to the satisfaction of the Secretary that extenuating circumstances exist must complete PLUS loan counseling offered by the Secretary prior to receiving the loan.

Certain operational changes made by the Department in November 2011 resulted in an increase in the number of PLUS loan applicants who were determined to have an adverse credit history, potentially limiting the financial options and resources available to those applicants. The modifications made in the proposed regulations will increase the number of PLUS loan applicants who pass the adverse credit history check and will not have to request reconsideration of an initial denial under the Department's process for determining whether extenuating circumstances for the adverse credit history condition exist.

We estimate an increase of approximately 370,000 PLUS loan applicants who will pass the adverse credit history check under the proposed regulations.

Under the proposed regulations, applicants would not need to apply for reconsideration of an initial PLUS loan denial due to an adverse credit history, saving them time and effort. Additionally, because the proposed regulations strike a balance between increased availability of PLUS loan funds to improve student access to postsecondary education and helping to limit overborrowing through improved financial literacy, we believe that there will be benefits for both borrowers and the Department.

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments that are outside the scope of the specific proposals in this notice of proposed rulemaking, as we are not required to respond to comments that are outside of the scope of the proposed rule. See the **ADDRESSES** section of this document for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8055, 1990 K Street NW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

## Background

Section 428B(a)(1)(A) of the HEA provides that to be eligible to receive a Federal PLUS Loan under the Federal Family Education Loan (FFEL) Program, the applicant must not have an adverse credit history, as determined pursuant to regulations promulgated by the Secretary. This same eligibility requirement applies to applicants for PLUS loans under the Direct Loan Program. *See* section 455(a)(1) of the HEA. The definition of ''adverse credit history'' in the current Direct Loan Program regulations is effectively the same as the regulatory definition of ''adverse credit history'' in the FFEL Program. The Department conducts a credit check on each applicant for a PLUS loan under the Direct Loan Program to determine whether he or she has an adverse credit history.

Section 685.200(b) and (c) of the Direct Loan Program regulations specifies that graduate and professional students, and parents borrowing on behalf of their dependent children, may borrow PLUS loans if they meet applicable eligibility requirements and do not have an adverse credit history. The regulations that specify what is considered to be an adverse credit history have not been updated since the Direct Loan Program was established in 1994.

In 2010, Congress amended the HEA to end the making of new loans under the FFEL Program effective July 1, 2010. Since that date, all new subsidized and unsubsidized Stafford Loans, PLUS Loans, and Consolidation Loans have been originated in the Direct Loan Program. In implementing this change, the Department found that the operational criteria being used in the Direct Loan Program to determine whether an applicant for a PLUS loan has an adverse credit history were not consistent with the definition of ''adverse credit history'' in the Direct Loan Program regulations or with the regulations for the FFEL Program. Specifically, the Department determined that PLUS loan applicants who had debts that were in collection or charged off were passing the adverse credit history check even though these applicants were 90 or more days delinquent on a debt, which constitutes an adverse credit history under the Department's regulations. Once the inconsistency was identified, the Department modified its procedures in November 2011 so that borrowers with debts in collection or which were charged off would be considered to have an adverse credit history. This change increased the number of parent and graduate and professional student PLUS loan applicants who were determined to have an adverse credit history and thus, were originally ineligible for a PLUS loan. As a result of the increased initial denial rate, the Department determined that it would be appropriate to review the adverse credit history standards that were originally established in 1994. To reflect programmatic and economic changes that have occurred since 1994, the Department proposes to amend § 685.200(b) and (c) to update the regulatory requirements governing PLUS loan adverse credit history determinations.

## Public Participation

On April 16, 2013, we published a document in the **Federal Register** (78 FR 22467) announcing topics for consideration for action by a negotiated rulemaking committee. A correction to this document was published in the **Federal Register** on April 30, 2013 (78 FR 25235). The topics for consideration listed in these documents were: Cash management of funds provided under the title IV Federal Student Aid programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock to credit hour conversion; gainful employment; changes to the campus safety and security reporting requirements in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act made by the Violence Against Women Reauthorization Act of 2013; and the definition of ''adverse credit history'' for borrowers in the Federal Direct PLUS Loan Program. In the April 16, 2013, document, we announced three public hearings at which interested parties could comment on the negotiated rulemaking topics suggested by the Department and could suggest additional topics for consideration for action by a negotiated rulemaking committee. On May 13, 2013, we published in the **Federal Register** (78 FR 27880) a document announcing the

addition of a fourth hearing. The hearings were held on—

May 21, 2013, in Washington, DC;
May 23, 2013, in Minneapolis, Minnesota;
May 30, 2013, in San Francisco, California; and
June 4, 2013, in Atlanta, Georgia.

We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. Transcripts from the public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.*

Written comments submitted in response to the April 16, 2013, **Federal Register** document may be viewed through the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2012–OPE–0008. You can link to the ED–2012–OPE–0008 docket as a related docket inside the ED–2014–OPE–0082 docket associated with this notice of proposed rulemaking. Alternatively, individuals can enter the docket ID ED–2012–OPE–0008 in the search box to locate the appropriate docket. Instructions for finding comments are also available on the site under ''How to Use Regulations.gov'' in the Help section.

**Negotiated Rulemaking**

Section 492 of the HEA requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

On November 20, 2013, the Department published a document in the **Federal Register** (78 FR 69612) announcing its intention to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid programs authorized under title IV of the HEA. The document set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Students; legal assistance organizations that represent students; consumer advocacy organizations; State higher education executive officers; State Attorneys General and other appropriate State officials; business and industry; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; regional accrediting agencies; national accrediting agencies; specialized accrediting agencies; financial aid administrators at postsecondary institutions; business officers and bursars at postsecondary institutions; admissions officers at postsecondary institutions; institutional third-party servicers who perform functions related to the title IV Federal Student Aid programs (including collection agencies); State approval agencies; and lenders, community banks, and credit unions. The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Chris Lindstrom, U.S. Public Interest Research Group, and Maxwell John Love (alternate), United States Student Association, representing students.

Whitney Barkley, Mississippi Center for Justice, and Toby Merrill (alternate), Project on Predatory Student Lending, The Legal Services Center, Harvard Law School, representing legal assistance organizations that represent students.

Suzanne Martindale, Consumers Union, representing consumer advocacy organizations.

Carolyn Fast, Consumer Frauds and Protection Bureau, New York Attorney General's Office, and Jenny Wojewoda (alternate), Massachusetts Attorney General's Office, representing State attorneys general and other appropriate State officials.

David Sheridan, School of International & Public Affairs, Columbia University in the City of New York, and Paula Luff (alternate), DePaul University, representing financial aid administrators.

Gloria Kobus, Youngstown State University, and Joan Piscitello (alternate), Iowa State University, representing business officers and bursars at postsecondary institutions.

David Swinton, Benedict College, and George French (alternate), Miles College, representing minority serving institutions.

Brad Hardison, Santa Barbara City College, and Melissa Gregory (alternate), Montgomery College, representing two-year public institutions.

Chuck Knepfle, Clemson University, and J. Goodlett McDaniel (alternate), George Mason University, representing four-year public institutions.

Elizabeth Hicks, Massachusetts Institute of Technology, and Joe Weglarz (alternate), Marist College, representing private, non-profit institutions.

Deborah Bushway, Capella University, and Valerie Mendelsohn (alternate), American Career College, representing private, for-profit institutions.

Casey McGuane, Higher One, and Bill Norwood (alternate), Heartland Payment Systems, representing institutional third-party servicers.

Russ Poulin, WICHE Cooperative for Educational Technologies, and Marshall Hill (alternate), National Council for State Authorization Reciprocity Agreements, representing distance education providers.

Dan Toughey, TouchNet, and Michael Gradisher (alternate), Pearson Embanet, representing business and industry.

Paul Kundert, University of Wisconsin Credit Union, and Tom Levandowski (alternate), Wells Fargo Bank Law Department, Consumer Lending & Corporate Regulatory Division, representing lenders, community banks, and credit unions.

Leah Matthews, Distance Education and Training Council, and Elizabeth Sibolski (alternate), Middle States Commission on Higher Education, representing accrediting agencies.

Carney McCullough, U.S. Department of Education, representing the Department.

Pamela Moran, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on

February 19–21, 2014, March 26–28, 2014, and April 23–25, 2014. In response to requests from members of the negotiating committee, the Department provided extensive PLUS loan data to the committee prior to the March session. During the March session, the Department proposed adding an additional negotiated rulemaking session to the schedule to give the negotiators sufficient time to consider the PLUS loan data. The negotiators agreed to add a fourth and final session held on May 19–20, 2014.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. These protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of six issues related to student financial aid. These six issues were: Clock to credit hour conversion; State authorization of distance education; State authorization of foreign locations of domestic institutions; cash management; retaking coursework; and PLUS loan adverse credit history. Under the protocols, a final consensus would have to include consensus on all six issues.

During the meeting, the Department explained that it planned to include the proposed regulations that would be published after completion of the negotiated rulemaking process in two separate NPRMs. One NPRM would contain the proposed PLUS loan adverse credit history regulations. The second NPRM would contain all the remaining proposed regulations on the negotiating agenda. This is consistent with past practice for publishing NPRMs, as the Department generally publishes proposed loan program regulatory changes separately from proposed regulations for the Student Assistance General Provisions regulations in 34 CFR Part 668 or other title IV, HEA program regulations when there are no shared cross-programmatic or other conforming changes involved.

Non-Federal negotiators encouraged the Department to take action quickly with respect to the PLUS loan adverse credit history regulations. The Department said it would consider designating final regulations resulting from this NPRM for early implementation under section 484(c)(2) of the HEA.

During committee meetings, the committee reviewed and discussed the Department's drafts of regulatory language and the committee members' alternative language and suggestions. At the final meeting on May 20, 2014, the committee did not reach consensus on the Department's proposed regulations. For this reason, and according to the committee's protocols, all parties who participated or were represented in the negotiated rulemaking, in addition to all members of the public, may comment freely on the proposed regulations. For more information on the negotiated rulemaking sessions, please visit: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info.*

**Summary of Relevant Data**

*PLUS Loan Data*

At the first negotiating session, the non-Federal negotiators asked the Department to provide certain data about the PLUS loan program to the negotiating committee. The non-Federal negotiators asked if the Department could calculate PLUS loan cohort default rates. They also asked for information on PLUS loan volume—both numbers of borrowers and amounts borrowed. Non-Federal negotiators asked to see rates of PLUS loan denials due to an adverse credit history, broken out by school sector. In addition, they asked for data on the frequency of different adverse credit conditions that result in denial of a PLUS loan.

The Department agreed to provide PLUS loan data for the PLUS loan adverse credit history discussion at the second negotiated rulemaking session.

*The Session 2 Data*

Prior to the second negotiated rulemaking session, the Department provided the non-Federal negotiators with charts containing the following data:

- Debt of PLUS, Parent PLUS, and Grad PLUS Borrowers;
- PLUS Credit Check Denial and Remediation Rates by Sector and by Program Offering;
- Credit Check Declination Rate by Sector by Year;
- Top Five Credit Check Declination Reasons by Sector by Year;
- PLUS Borrower 3-Year Cohort Default Rate; and
- AY 2012–13 Credit Check Approval and Denials.[1]

In addition, during the second session, the Department provided the negotiators with data breaking out PLUS loan disbursements under the Direct Loan and FFEL programs from 2006 to 2010.[2]

The non-Federal negotiators expressed appreciation to the Department for providing the requested data about PLUS loans. The non-Federal negotiators also asked for additional data in connection with the charts showing PLUS loan remediation rates (the rates at which applicants who were initially denied PLUS loans due to an adverse credit history were able to obtain PLUS loans; or, if the parent did not obtain PLUS loans, the rates at which the parent's dependent children were able to receive additional unsubsidized loans) and PLUS loan cohort default rates. The Department agreed to provide this additional data for the third negotiated rulemaking session.

*The Session 3 Data*

Prior to the third negotiated rulemaking session, in response to the requests made during the second session, the Department provided the non-Federal negotiators with amended versions of the following charts:

- PLUS Credit Check Denial Remediation Rates by Sector and by Program Offering (two versions reflecting breakout of remediation by obtaining an endorser, submitting documentation of extenuating circumstances, or the dependent student's receipt of additional unsubsidized loans); and
- PLUS Borrower Three-Year Cohort Default Rates (broken out by the FFEL and Direct Loan programs).[3]

**Summary of Proposed Changes**

The proposed regulations would—

- Revise the student PLUS loan borrower eligibility criteria to state more clearly that the PLUS loan adverse credit history requirements apply to graduate or professional student PLUS loan borrowers.
- Add definitions of the terms ''charged off'' and ''in collection'' for

[1] All of the charts provided to the negotiators are available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#2.*

[2] This data is available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#2.*

[3] These charts are available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#3.*

purposes of determining whether an applicant for a PLUS loan has an adverse credit history.

- Specify that a PLUS loan applicant has an adverse credit history if the applicant has one or more debts with a total combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.
- Provide that the combined outstanding balance threshold of $2,085 may be adjusted over time on a basis determined by the Secretary.
- Revise the provision that specifies the types of documentation the Secretary may accept as a basis for determining that extenuating circumstance exist for a PLUS loan applicant who is determined to have an adverse credit history.
- Specify that an applicant for a PLUS loan who is determined to have an adverse credit history but who documents to the Secretary's satisfaction that extenuating circumstances exist must complete PLUS loan counseling offered by the Secretary before receiving the loan.

**Significant Proposed Regulations**

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

*Student PLUS Borrower (34 CFR 685.200(b))*

*Statute:* Section 428B(a)(1)(A) of the HEA specifies that a graduate or professional student with an adverse credit history is not eligible to borrow a PLUS loan.

*Current Regulations:* Current § 685.200(b)(5) specifies that a student must meet the requirements of § 685.200(c)(1)(vii) to qualify for a PLUS loan. Current § 685.200(c)(1)(vii) includes the adverse credit history requirements for parent PLUS loan borrowers.

*Proposed Regulations:* Proposed § 685.200(b)(5) specifies that a graduate or professional student must meet the requirements ''that apply to a parent'' under § 685.200(c)(2)(viii)(A) through (c)(2)(viii)(D) to qualify for a PLUS loan. Proposed § 685.200(c)(2)(viii)(A) through (c)(2)(viii)(D) would include the adverse credit history requirements for parent PLUS borrowers.

*Reasons:* The proposed regulations would revise § 685.200(c). Due to the revision to § 685.200(c), we would also need to revise the cross-reference in § 685.200(b)(5). New § 685.200(c)(1)(viii)(B) refers to a parent with an adverse credit history, rather than an applicant with an adverse credit history. Therefore, a conforming change, adding a reference to the ''parent'', would be required in § 685.200(b)(5). In addition, proposed § 685.200(b)(5) would clarify that the adverse credit history requirements that apply to parent PLUS borrowers under § 685.200(c)(2)(viii)(A) through (c)(2)(viii)(D) also apply to all student PLUS borrowers.

Some of the non-Federal negotiators contended that there should be different eligibility standards for parent PLUS loan borrowers and graduate and professional student PLUS loans borrowers. These negotiators argued that graduate and professional students should be eligible for PLUS loans without application of the adverse credit history criteria. Alternatively, one non-Federal negotiator requested that the Department consider defining ''adverse credit history'' differently for graduate and professional student PLUS loan borrowers than for parent PLUS loan borrowers.

We did not agree with the suggestion to have different standards for parent and student PLUS loan applicants. We noted that, pursuant to the HEA, there is a single PLUS loan program that provides loans for both graduate and professional students and parents of dependent students. The statutory requirement that a PLUS loan applicant not have an adverse credit history applies equally to student and parent applicants. We see no basis under the HEA for establishing different regulatory definitions of ''adverse credit history'' for graduate and professional student applicants and parent PLUS applicants.

*Parent PLUS Borrower: Definitions (34 CFR 685.200(c)(1))*

*Statute:* None.

*Current Regulations:* None.

*Proposed Regulations:* The proposed regulations would define the terms ''charged off'' and ''in collection'' for purposes of adverse credit history determinations. Proposed § 685.200(c)(1)(i) would define the term ''charged off'' to mean a debt that a creditor has written off as a loss, but that is still subject to collection action. Proposed § 685.200(c)(1)(ii) would define the term ''in collection'' to mean a debt that has been placed with a collection agency by a creditor, or that is subject to more intensive efforts by a creditor to recover amounts owed from a borrower who has not responded satisfactorily to the demands routinely made as part of the creditor's billing procedures.

*Reasons:* Under the current regulations, an applicant who has debts that are in collection or that has been charged off will be determined to have an adverse credit history, but the regulations do not define these terms. The proposed definitions for these terms are commonly understood definitions in the collections industry. Although some of the non-Federal negotiators did not agree that these conditions should constitute adverse credit, they agreed that if the Department is going to consider debts that are in collection or that have been charged off as indicators that a borrower has an adverse credit history, the terms should be defined in the regulations.

*Parent PLUS Borrower: Adverse Credit History (34 CFR 685.200(c)(2))*

*Statute:* Section 428B(a)(1)(A) of the HEA provides that a parent of a dependent student is not eligible to borrow a PLUS loan if the parent has an adverse credit history.

*Current Regulations:* Current regulations under § 685.200(c)(1)(vii)(B) establish the conditions under which a PLUS loan applicant will be considered to have an adverse credit history. Under § 685.200(c)(1)(vii)(B), an adverse credit history means that, as of the date of the credit report, the applicant: (1) Is 90 or more days delinquent on any debt; or (2) has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the HEA during the five years preceding the date of the credit report.

*Proposed Regulations:* Under proposed § 685.200(c)(2)(viii)(B)(*1*), an adverse credit history would mean that a parent (or, by cross-reference, a student) has one or more debts with a total combined outstanding balance greater than $2,085, that are 90 or more days delinquent as of the date of the credit report, or that have been charged off or placed in collection during the two years preceding the date of the credit report. Proposed § 685.200(c)(2)(viii)(B)(*1*) would provide that the $2,085 threshold amount may be adjusted over time on a basis determined by the Secretary. In proposed § 685.200(c)(2)(viii)(B)(*2*) the Department would retain the current provision that provides that a parent or student has an adverse credit history if the parent or student has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under

title IV of the HEA during the five years preceding the date of the credit report.

*Reasons:* After the Department corrected its implementation of the adverse credit history standards in November 2011, some borrowers who had qualified for PLUS loans in earlier years were determined to have an adverse credit history when they applied for subsequent PLUS loans even though their credit history had not substantially changed. In many cases, these applicants requested reconsideration on the basis of extenuating circumstances as permitted under the regulations.

Based on its experience in handling PLUS loan applicant requests for reconsideration on the basis of extenuating circumstances, the Department concluded that it was appropriate to update the standards for determining that an applicant has an adverse credit history to reflect programmatic and economic changes since the standards were established in 1994.

We believe that the proposed changes to the PLUS loan adverse credit history regulations will improve the adverse credit history determination process by incorporating some of the circumstances that the Department considers during the reconsideration process into the standards for initial determinations of an adverse credit history. We expect that making these changes to the definition of ''adverse credit history'' will reduce the number of applicants who, under the current regulations, are initially denied PLUS loans due to an adverse credit history, but upon further review, the Department determines have extenuating circumstances. During the negotiated rulemaking sessions, the committee members discussed how the proposed changes would serve three public interests: (1) Ensuring greater access to higher education for all students and families; (2) ensuring that borrowers do not take out loans that they will be unable to repay without hardship; and (3) protecting the Federal fiscal interest by ensuring that borrowers repay their student loans. Some of the non-Federal negotiators expressed the view that the primary focus of the title IV, HEA programs, including the PLUS loan program, should be increasing access to higher education. These negotiators argued that the lending standards that apply to commercial loans should not be applied to PLUS loans, which serve a compelling public interest. The negotiators expressed the view that it is a parent's (or graduate or professional student's) decision as to whether to borrow a PLUS loan, and in what amount, even if the applicant's financial circumstances or history may indicate that the applicant could experience difficulty in paying it back. One non-Federal negotiator strongly recommended that the Department return to the adverse credit history standard as it had been implemented in the Direct Loan program prior to the changes made in November 2011, under which debts in collection or that were charged off did not constitute adverse credit.

Other non-Federal negotiators argued that the Department should take action to prevent overborrowing by parents and students. These negotiators argued that a return to the standard in the Direct Loan program used prior to November 2011 would encourage both student and parent borrowers to take out greater, perhaps unaffordable, amounts of PLUS loan debt regardless of the financial circumstances or history of the applicant. They also argued that, in addition to ensuring access to higher education, the Department should consider whether or not borrowers could repay these loans.

In expressing their concerns about overborrowing and the potential for high debt loads, some non-Federal negotiators noted that, unlike Direct Subsidized and Direct Unsubsidized loans, there are no annual or aggregate loan limits for PLUS loans and a PLUS loan can be taken out in an amount up to the student's cost of attendance. They further noted that parent PLUS loan borrowers are not eligible for income-driven repayment plans and it is very difficult to qualify for a bankruptcy discharge of a student or parent loan. To that end, some non-Federal negotiators recommended establishing annual and aggregate loan limits for PLUS loan borrowers. We noted that loan limits in the title IV, HEA programs, including the PLUS loan program, are based on the relevant statute, and may not be established through regulation.

Some non-Federal negotiators recommended considering the applicant's ability to repay in an adverse credit history determination in order to prevent overborrowing of PLUS loans. We noted that the HEA would need to be amended to allow consideration of the applicant's ability to repay. Rather, adverse credit history is a measure of an individual's history of repaying existing debt. It does not measure whether the individual has the financial ability to repay a specific level of debt, but whether that individual has repaid debt in the past.

In developing the proposed regulations, we attempted to strike a balance between the public policy interests of ensuring access to higher education while helping to ensure that borrowers do not take out loans that their past financial credit history indicates they will not repay. Based on our experience in evaluating requests for reconsideration based on extenuating circumstances, we expect that more borrowers would qualify for PLUS loans under the adverse credit history standard in the proposed regulations without the need to demonstrate extenuating circumstances.

The proposed definition of ''adverse credit history'' has several components. Each component is discussed separately in the following sections.

Component 1—Outstanding Balance Greater than $2,085

*Statute:* None.

*Current Regulations:* Current § 685.200(c)(1)(vii)(D) specifies that, for purposes of documenting extenuating circumstances, the Secretary may rely on a satisfactory statement from the applicant explaining any delinquency with an outstanding balance greater than $500.

*Proposed Regulations:* Under the proposed regulations, the amount of the applicant's debt would be taken into account during the initial determination of whether the applicant has an adverse credit history, rather than as part of the process for documenting extenuating circumstances following denial of a PLUS loan. In addition, the proposed regulations would establish a standard that an applicant is not considered to have an adverse credit history unless the applicant's debts have a total combined outstanding balance greater than $2,085.

*Reasons:* After the November 2011 operational change to the Department's implementation of the adverse credit history definition, the Department adjusted the $500 amount, referred to as ''the threshold amount,'' to $780 to account for inflation since 1994. Later, the Department increased the threshold amount from $780 to $2,085. The Department selected this level to reflect the estimated median debt level for all debts with a status of in collection, charged off, or 90 or more days delinquent, from all parent PLUS loan denials resulting from all credit checks conducted between the spring of 2012 and the spring of 2013. The Department now proposes to use the $2,085 threshold amount in the initial determination of whether an applicant has an adverse credit history to reflect current operational practice in our reconsideration process.

Component 2—Adjustment Over Time

*Statute:* None.

*Current Regulations:* None.

*Proposed Regulations:* Under the proposed regulations, the $2,085 amount may be adjusted over time on a basis determined by the Secretary.

*Reasons:* Several of the non-Federal negotiators recommended that the Department index the $2,085 amount to the rate of inflation. The negotiators argued that by indexing the amount to an accepted measure of inflation, increases could be calculated and implemented without the necessity of amending the regulations.

Most of these negotiators recommended indexing the $2,085 amount to the Consumer Price Index (CPI), a measure of inflation determined by the Bureau of Labor Statistics (BLS). However, BLS calculates several different CPI rates on a monthly basis. The CPI rate most commonly used as a measure of inflation is the Consumer Price Index for All Urban Consumers (CPI–U). The Department considered using the CPI–U as the basis for indexing, but decided to invite comment on which index would be most appropriate in this context, and whether to base the adjustment of the $2,085 amount on a measure other than inflation.

One non-Federal negotiator suggested that the Department should adjust the amount of debt annually. This negotiator argued that, while small, short-term changes would have little impact in one year, over a period of time they could have a significant impact. Another non-Federal negotiator suggested using the CPI, but averaging the rate over time. This negotiator noted that averaging the rate over time would smooth out abrupt and relatively short-term changes in CPI and thus reduce volatility.

The Department is open to adjusting the $2,085 amount. Therefore, we are proposing in the regulations that the Secretary may adjust the amount over time, on a basis determined by the Secretary. Any adjustments that the Secretary makes to the $2,085 amount would be announced through a Notice in the **Federal Register**. We invite comment on this provision, and welcome recommendations on an appropriate measure of inflation to use in adjusting this amount, or whether another measure of growth or decline in consumer debt due to economic conditions may be a more appropriate measure.

As discussed in the ''Operational Issues'' section of this preamble, the Department intends to collect, and where appropriate publish, information about the performance of parent and graduate/professional student PLUS loans, including default rate information based on credit history characteristics of Plus loan applicants and individual institutional default rates.

Component 3—Debts 90 or More Days Delinquent

*Statute:* None.

*Current Regulations:* Current § 685.200(c)(1)(vii)(B)(*1*) specifies that a PLUS loan applicant who is 90 or more days delinquent on any debt has an adverse credit history.

*Proposed Regulations:* The proposed regulations would maintain the 90 or more days delinquent standard.

*Reasons:* Some of the non-Federal negotiators argued that the current delinquency standard of 90 or more days past due is too short for adverse credit history determinations. These negotiators recommended extending the past due period to 120 days or 180 days. They asserted that credit reports often have errors that may not be corrected during a 90-day timeframe.

In the absence of a consistent industry-wide standard, we decided to maintain the standard of 90 or more days delinquent in the proposed regulations. We rely on credit reports to determine whether an applicant is delinquent on a debt, as the number of days a debt is past due is included on an individual's credit report until an account is placed in collection. Based on our experience, most creditors send accounts to collection once they are 90 days' delinquent. Once an account is placed in collection, the number of days past due is generally not reflected on the credit report. Therefore, a standard beyond the current 90-day standard would be more difficult to track.

With regard to errors on credit reports, a PLUS loan applicant would have the opportunity during the process for determining whether extenuating circumstances for the adverse credit history condition exist to show that the determination of an adverse credit history was based on an error in the credit report by providing an updated credit report or information from the creditor.

Component 4—In Collection or Charged Off

*Statute:* None.

*Current Regulations:* None.

*Proposed Regulations:* Under the proposed regulations, an applicant with debts in collection or debts that have been charged off during the two years preceding the date of the credit report would have an adverse credit history.

*Reasons:* Under current operational practice, a borrower with debts in collection or debts that have been charged off in the preceding five years is considered to have an adverse credit history. One non-Federal negotiator recommended that the Department return to the operational standard used prior to November 2011, when the Department did not consider these circumstances to constitute an adverse credit history.

We do not agree that the earlier operational practice met the purposes of the statute in determining an adverse credit history. We believe it would create an inconsistency in the regulations to not consider as an adverse credit history accounts in collection or debts that have been charged off, while including accounts that are 90 or more days delinquent. Generally, accounts in collection or accounts that have been charged off are well past the 90-day delinquency stage.

Although we do not propose to change the treatment of collection accounts and charged-off accounts in the determination of an adverse credit history, we did agree to propose to reduce the period of time for which such accounts would be considered as an adverse credit history. The proposed regulations would reduce the current look-back period of five years to two years preceding the date of the credit report. We believe that this standard would screen out most anomalous conditions, such as a single bad debt on an otherwise clean credit report.

Non-Federal negotiators made varying proposals for the look-back period for debts that are in collection or charged off. Some negotiators recommended a one-year look-back period. We do not believe, however, that one year is sufficient, particularly when the past due status of the account might be reduced through a series of payments, but not eliminated, and then increase again.

Other non-Federal negotiators recommended a three-year look-back period. They argued that, in many States, debts have a statute of limitations of three years. However, because the statute of limitations on debts varies from State to State, we do not think that it is a useful standard in determining the length of the look-back period for collections and charge-offs in the PLUS loan program.

Based on these considerations, we believe that the proposed two-year look-back period for debts that are in collection or have been charged off is appropriate. A one-year look-back period is too short to measure a PLUS loan applicant's history and a five-year

period is more closely associated with the major, long-term items indicating an adverse credit history in proposed § 685.200(c)(2)(viii)(B)(*2*).

*Extenuating Circumstances (34 CFR 685.200(c)(2))*

*Statute:* None.

*Current Regulations:* Section 685.200(c)(1)(vii)(A)(*3*) specifies that a parent who has an adverse credit history, but who documents to the satisfaction of the Secretary that extenuating circumstances exist, may be eligible for a PLUS loan. Section 685.200(c)(1)(vii)(D) of the current regulations (as amended by final regulations published on November 1, 2013) provides that the Secretary may determine that extenuating circumstances exist based on documentation that includes, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from a borrower explaining any delinquencies with an outstanding balance of less than $500.

*Proposed Regulations:* Proposed § 685.200(c)(2)(viii)(A)(*3*) states that, in addition to providing documentation to the Secretary demonstrating that extenuating circumstances exist, a parent or student with an adverse credit history would be required to complete PLUS loan counseling offered by the Secretary to become eligible for a PLUS loan.

Proposed § 685.200(c)(2)(viii)(D)(*2*) would eliminate from the list of possible extenuating circumstances a statement from an applicant explaining any delinquencies with an outstanding balance of less than $500.

*Reasons:* During the negotiations there was a significant amount of discussion about methods for improving financial literacy for PLUS loan applicants. Many non-Federal negotiators recommended that all parent PLUS loan applicants be required to complete loan counseling before receiving a PLUS loan, much as first-time student borrowers are required to complete entrance counseling before receiving Direct Subsidized Loans, Direct Unsubsidized Loans, or student Direct PLUS loans. The Department explained, however, that, while loan counseling is a statutory requirement for student borrowers, the HEA does not require parent PLUS applicants to receive loan counseling prior to receiving a PLUS loan. Therefore, the Department does not have the legal authority to extend this requirement to all PLUS loan applicants.

However, the Department is proposing through these regulations that a PLUS loan applicant who is ineligible for a PLUS loan due to an adverse credit history, but who documents to the satisfaction of the Secretary that extenuating circumstances exist, would be required to complete loan counseling as an additional condition for receiving the PLUS loan. The Department also plans to offer enhanced PLUS loan consumer information, as discussed under ''Operational Issues.''

The proposed regulations do not apply the loan counseling requirement to a PLUS loan applicant who has an adverse credit history but is eligible to receive a PLUS loan by obtaining an endorser who does not have an adverse credit history. A PLUS loan applicant who obtains an endorser is still primarily responsible for repaying the PLUS loan. The Department believes that these applicants, like PLUS loan applicants who qualify due to extenuating circumstances, would benefit from PLUS loan counseling. Therefore, the Secretary is requesting comment on whether the loan counseling requirement for applicants who qualify due to extenuating circumstances should also apply to applicants who obtain an endorser.

**Operational Issues**

*Validity of Credit Checks for 90 Days*

As explained in the ''Background'' section of this preamble, the Department conducts a credit check on each applicant for a PLUS loan to determine whether he or she has an adverse credit history. A credit check is conducted when a school submits a PLUS loan origination record to the Department's Common Origination and Disbursement (COD) System, or when an applicant for a PLUS loan completes the optional Direct PLUS Loan Request for Supplemental Information (Direct PLUS Loan Request) on the Department's StudentLoans.gov Web site. Alternatively, a school may submit a credit check request for a PLUS loan applicant to the COD System Web site.

Under the Department's current procedures, an approved credit check remains valid for purposes of determining an applicant's eligibility to receive a PLUS loan for 90 days from the date on which the credit check was performed. That is, any action that would normally trigger a credit check (for example, the submission of a Direct PLUS Loan Request or a PLUS loan origination record) will not do so if a prior credit check on the applicant was conducted within the past 90 days. This 90-day window reflects the Department's long-standing practice in the Direct Loan Program and is consistent with the standard previously used by most FFEL Program lenders when conducting credit checks on applicants for Federal PLUS Loans. The 90-day window is not in the Direct Loan Program regulations, but it was adopted by the Department as a reasonable standard for ensuring that a credit check is conducted within a timeframe that will result in an accurate representation of a PLUS loan applicant's current credit history prior to the receipt of PLUS loan funds.

During the negotiations, many of the non-Federal negotiators expressed concern that the current 90-day period is not a long enough period of validity for the credit check when disbursing PLUS loans. They noted that, in certain situations, the requirement that a new credit check be conducted (if the most recent credit check was more than 90 days in the past) can mean that a PLUS loan applicant who was initially approved for a PLUS loan for the purpose of a school's financial aid award packaging for the upcoming academic year may later be denied the loan if an event that triggers another credit check occurs more than 90 days after the date of the prior credit check, and if the subsequent credit check determines that the borrower has an adverse credit history. For example, if a student or parent was approved for a PLUS loan for the purpose of a school's financial aid award packaging for the upcoming academic year based on the results of a credit check that was completed when the applicant submitted a Direct PLUS Loan Request, but the school is not able to submit the PLUS loan origination record within 90 days of the date of that credit check, a second credit check will be conducted when the loan origination record is submitted.

Similarly, an individual who received a PLUS loan based on the results of a credit check may later request additional loan funds by submitting another Direct PLUS Loan Request and indicating that he or she wants to increase the amount of an existing PLUS loan. If the borrower submits the Direct PLUS Loan Request more than 90 days after the date of the prior credit check, another credit check will be conducted. In both instances, the subsequent credit check may potentially result in a determination that the borrower now has an adverse credit history (if the applicant's financial circumstances have changed since the date of the prior credit check), and therefore is ineligible for a PLUS loan or for an increased loan amount, even though the borrower was

previously approved based on the results of an earlier credit check.

Many of the non-Federal negotiators stated that applicants who are determined to be eligible to receive a PLUS loan based on the results of a credit check should be able to rely on that approval if they later need to request an increase in the amount of an existing loan. Accordingly, some of these negotiators suggested that the Department should consider changing its procedures so that the results of a credit check would remain valid for a full year after the date of the credit check. Other negotiators proposed that the Department go even further and make a credit check valid for the purpose of a parent's or student's eligibility to receive PLUS loans for the duration of a student's program of study if the borrower was not determined to have an adverse credit history.

After considering the concerns expressed by some of the non-Federal negotiators, the Department has decided to modify its procedures so that a credit check that indicates that the applicant does not have an adverse credit history would remain valid for 180 days. We believe that extending the window for an even longer period of time would result in borrowers receiving PLUS loan funds based on credit checks that do not reasonably reflect the applicant's most current financial circumstances. However, extending the window from the current 90 days to 180 days should satisfactorily address the concerns raised by some of the negotiators.

Although the Department agreed with the non-Federal negotiators that it would be appropriate to extend the period of time during which an approved credit check is valid, the Department also reminded the negotiators that under current procedures it is possible for a school to process a borrower's request for an increase in the amount of an existing PLUS loan without subjecting the borrower to a second credit check. In such cases, a school may simply submit an upward adjustment to the amount of an existing PLUS loan to the COD system, without submitting a new PLUS loan origination record. The submission of an upward adjustment will not trigger a new credit check, regardless of the date of the most recent credit check for the borrower. Also, it is not mandatory for borrowers to request an increase in the amount of an existing loan by submitting a Direct PLUS Loan Request, which may trigger a second credit check. A school may obtain a borrower's request for a loan amount increase by other means.

*Enhancing PLUS Borrower Consumer Information*

As discussed under the ''Extenuating Circumstances'' section of this preamble, the negotiating committee discussed methods for improving access to consumer information for PLUS loan applicants. In particular, many non-Federal negotiators believed that there is currently a lack of sufficient consumer information specifically targeted at parent PLUS loan applicants.

The Department agrees with the concerns expressed by the negotiators and will develop enhanced consumer information and resources for parent PLUS applicants that could be incorporated within the existing PLUS loan application process or made available to parents through links to information on other Department Web sites. At a minimum, the Department will offer voluntary entrance counseling to all parent PLUS applicants which would provide clear information on the monthly payment that would be required for the loan the applicant is requesting as well as what the total monthly payment would be if the applicant borrows the same amount for each year of a dependent student's four-year or six-year undergraduate program. In addition, the Department will expand its current online financial tools to include a PLUS-specific loan calculator that would allow parents to evaluate their future ability to repay PLUS loans based on their individual economic circumstances.

The Department intends to collect, and where appropriate publish, information about the performance of parent and graduate/professional student PLUS loans, including default rate information based on credit history characteristics of PLUS loan applicants and individual institutional default rates. Providing more detailed information about the PLUS loan program will assist the Department in evaluating the definition of adverse credit history in the future and will allow institutions to understand the impact of PLUS loan borrowing on students and parents in order to help them better support their parent and student PLUS borrowers.

We invite suggestions for the specific types of enhanced consumer information that the Department should develop for PLUS applicants, particularly parent PLUS applicants who may be planning to borrow for more than one dependent over multiple academic years. We also invite comments on what other types of information about Parent PLUS loans would be helpful for institutions and consumers, and we invite suggestions on the most effective way for the Department to communicate with parent PLUS borrowers.

**Executive Orders 12866 and 13563**

*Regulatory Impact Analysis*

Introduction

The Department makes Direct PLUS Loans to graduate or professional students and to parents of dependent undergraduate students to help pay for education expenses not covered by other financial aid. According to data from the Department's Federal Student Aid (FSA) office, approximately 3.9 million borrowers owe a balance of $100 billion in total Direct PLUS loans. The Department is proposing these regulations to update the standard for determining if a potential borrower has an adverse credit history for purposes of eligibility for a Direct PLUS loan.

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that

their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits to borrowers and institutions. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

This Regulatory Impact Analysis is divided into five sections. The ''Need for Regulatory Action'' section discusses why updating the regulatory requirements governing PLUS loan adverse credit history determinations is necessary.

The ''Summary of Proposed Regulations'' section briefly highlights the updates, revisions, and new requirements for PLUS loan applicants that are included in the proposed regulations.

The ''Costs, Benefits, and Transfers'' section discusses the impact of the proposed regulations on institutions of higher education, students, and parents. We anticipate that the proposed regulations would result in a lower denial rate for PLUS loan applicants. For some parents and graduate and professional students who would be denied PLUS loans under the current standards, the proposed regulations would allow them to borrow a PLUS loan in an amount up to the cost of attendance.

Under ''Net Budget Impacts,'' we present our estimate that the proposed regulations would not have a significant net budget impact on the Federal government.

In ''Alternatives Considered,'' we describe other approaches we considered for key provisions of the proposed regulations, including different definitions for adverse credit history for parents and graduate students, criteria regarding the borrower's ability to repay as part of the adverse credit history definition, indexing the $2,085 threshold amount to the rate of inflation, increasing the delinquency period of 90 or more days past due, and increasing the length of time for the look-back period for debts that are in collection or charged off.

## Need for Regulatory Action

Congress amended the HEA in 2010 to end the origination of new loans under the FFEL Program. All new subsidized and unsubsidized Stafford Loans, PLUS Loans, and Consolidation Loans are made under the Direct Loan Program. To be eligible for a Federal Direct PLUS loan, under the statute, an applicant must not have an adverse credit history. To determine if an applicant has an adverse credit history the Department conducts a credit check on the applicant. A PLUS loan applicant is considered to have an adverse credit history if the credit report shows the applicant is 90 days delinquent on any debt, or has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a title IV, HEA program debt in the five years preceding the date of the credit report.

Since 2011, we have made operational changes to improve compliance with the regulations and the practices of the FFEL program. Specifically, the Department applied operational standards that were similar to those in the FFEL program where an applicant with debts in collection or charged off is considered to have an adverse credit history because the applicant is 90 or more days delinquent on a debt. Based on these standards, more PLUS loan applicants were determined to have an adverse credit history and had to request reconsideration of the PLUS loan denial through the Department's process for determining whether extenuating circumstances for an adverse credit history condition exist. After these changes resulted in an increase in PLUS loan denials, the Department made operational changes to balance making the Direct Loan PLUS program consistent with the old FFEL regulations and the public policy goal of maintaining access to higher education. In the interest of providing transparency to institutions and families, we concluded that the operational changes that the Department instituted in its operating procedures should be updated in the regulatory requirements governing PLUS loan adverse credit history determinations, which were originally established in 1994.

The proposed regulations would update the standard for determining if a potential borrower has an adverse credit history and more specifically would amend the definition of ''adverse credit history'' and require PLUS loan counseling for a parent or student with an adverse credit history who is approved for a PLUS loan as a result of the Secretary's determination that extenuating circumstances exist.

## Summary of Proposed Regulations

The proposed regulations would update the eligibility requirements for a PLUS loan. Specifically, the proposed regulations would state more clearly that the PLUS loan adverse credit history requirements apply to graduate student PLUS loan borrowers, as well as parent PLUS borrowers. In addition, the proposed regulations would define the terms ''in collection'' and ''charged off'' for purposes of determining whether an applicant for a PLUS loan has an adverse credit history. They would also specify that a PLUS loan applicant has an adverse credit history if the applicant has one or more debts with a total combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report. The proposed regulations would provide that the debt threshold of a combined outstanding balance greater than $2,085 may be adjusted over time

on a basis determined by the Secretary. The proposed regulations would also revise the provision that specifies the types of documentation the Secretary may accept as a basis for determining that extenuating circumstances exist for a PLUS loan applicant who is determined to have an adverse credit history. Finally, the regulations would specify that an applicant for a PLUS loan who is determined to have an adverse credit history, but who documents to the Secretary's satisfaction that extenuating circumstances exist, must complete PLUS loan counseling offered by the Secretary before receiving the PLUS loan.

Costs, Benefits, and Transfers

Under the proposed regulations, the Department expects that the number of approved applications for parent and graduate and professional student PLUS loans will increase from 2012–2013 levels, and that this will result in a series of costs, benefits, and transfers. The most significant factor leading to this increase is expected to be the establishment of a new standard for the determination that an applicant has an adverse credit history. In particular, under the proposed regulations, an adverse credit history means that the applicant has one or more debts with a total combined outstanding balance greater than $2,085 that are 90 or more days delinquent as of the date of the credit report, or that have been placed in collection or charged off during the two years preceding the date of the credit report.

Over 70 percent of the PLUS loan application denials in the past three academic years have been a result of delinquent debt that was held by the original creditor, charged off, or was in collection status.

| Reason for credit check denial | Academic year 2011–2012 (percent) | Academic year 2012–2013 (percent) | Academic year 2013–2014 (through February 2014) (percent) |
|---|---|---|---|
| ACCOUNT IN COLLECTION | 40.9 | 46 | 46 |
| CHARGE OFF | 21.3 | 24 | 24 |
| PRESENTLY 90 OR MORE DAYS DELINQUENT | 11.1 | 14 | 13 |
| CHAPTER 7, 11, OR 12 BANKRUPTCY | 7.9 | 5 | 6 |
| COUNTY/STATE/FEDERAL GOVERNMENT TAX LIEN WITHIN LAST 5 YEARS | 6.4 | 3 | 3 |
| OTHER REASONS | 12.3 | 9 | 9 |

We estimate that, under the proposed regulations, approximately 33 percent of the applicants who were initially denied PLUS loans in the 2012–2013 award year would have been approved in the initial process.

| | AY 2012–13 PLUS | | | Number and percentage of denied applications in AY 2012–2013 that would be approved under the proposed regulations | |
|---|---|---|---|---|---|
| | Number denied | Number approved | Total | Number | Percentage |
| All Credit Checks (Original Decision) | 1,123,617 | 1,300,986 | 2,424,603 | 371,508 | 33 |

We also believe that the proposed regulations would clarify the process by which applicants request reconsideration, and possibly increase the percentage of denied loan applicants who eventually qualify for PLUS loans after requesting reconsideration or obtaining an endorser who does not have an adverse credit history.

*Students/Parents*

Parent PLUS loan applicants and their dependent students would be affected by the proposed regulations. Under the proposed regulations, a larger number of parent PLUS loan applicants would be approved for PLUS loans on behalf of their dependent students. As a result, some families could accrue higher loan debt amounts.

Unlike Direct Subsidized and Unsubsidized loans, PLUS loans do not have annual or lifetime aggregate limits. PLUS loans can be borrowed in any amount up to and including the full cost of attendance, which is an amount that is determined by individual institutions and is beyond the control of the Department.

In the 2011–2012 award year, the median total PLUS loan debt for a parent who borrowed a PLUS loan at any point for a dependent undergraduate student ages 18 to 24 in the student's fourth (senior) year or above was $27,700.[4] If the dependent student had borrowed the maximum amount of his or her Direct Loans, the total debt shared by the parent and student would be equal to $58,700, $1,300 more than the aggregate limits for an independent student.

Parents who take out PLUS loans on behalf of their dependent children are acquiring some of the debt burden associated with their child's education. Parent PLUS loans have higher interest rates and origination fees than Direct Subsidized and Direct Unsubsidized loans.

In the example that follows, the Department compares two sample borrowers to show the potential impact of borrowing under the parent PLUS Loan Program compared to borrowing up to the annual Direct Loan limits for independent students. Student A's parent applied for a parent PLUS loan; however, Student A's parent was not approved for parent PLUS loans in any of the four years. Therefore, Student A was eligible to borrow Unsubsidized Stafford loans up to the independent borrower limits. Students B's parent was approved for parent PLUS loans for all four years to help pay for Student B's college education. The total amount borrowed by each of the families in this example is equal. The example also assumes that both borrowers took out loans every year of college, the student graduated in four years, and repayment began following graduation. Student A deferred all payments on the

[4] *http://nces.ed.gov/programs/digest/d13/tables/dt13_331.95.asp*

Unsubsidized Stafford loans and Student B's parent deferred payments on their PLUS loans until six months after graduation. The example also uses the current interest rates and origination fees (as of July 1, 2014) and assumes they remain unchanged through the two students' matriculation (this is only an example; although interest rates are fixed over the life of the individual loan, those rates are updated annually and origination fees can be changed.)

| | Direct subsidized | Direct unsubsidized | Interest rate | Months until repayment | Amount owed upon entering repayment |
|---|---|---|---|---|---|
| Student A: Dependent student whose parents were denied a parent PLUS loan | | | | | |
| 1st Year Fall | $ 1750 | $ 3,000 | 0.0466 | 50 | $ 5,424 |
| 1st Year Spring | 1,750 | 3,000 | 0.0466 | 45 | 5,365 |
| 2nd Year Fall | 2,250 | 3,000 | 0.0466 | 38 | 5,791 |
| 2nd Year Spring | 2,250 | 3,000 | 0.0466 | 33 | 5,731 |
| 3rd Year Fall | 2,750 | 3,500 | 0.0466 | 26 | 6,717 |
| 3rd Year Spring | 2,750 | 3,500 | 0.0466 | 21 | 6,648 |
| 4th Year Fall | 2,750 | 3,500 | 0.0466 | 14 | 6,551 |
| 4th Year Spring | 2,750 | 3,500 | 0.0466 | 9 | 6,482 |
| | | | | Total Due | **48,709** |

| | Direct subsidized | Direct unsubsidized | Interest rate | Amount owed upon entering repayment | Parent PLUS | Interest rate | Months until repayment | Amount owed upon entering repayment |
|---|---|---|---|---|---|---|---|---|
| Student B: Dependent student with parents approved for PLUS loans | | | | | | | | |
| 1st Year Fall | $ 1,750 | $ 1,000 | 0.0466 | $ 2,995 | 2000 | 0.0721 | 50 | $ 2,712 |
| 1st Year Spring | 1,750 | 1,000 | 0.0466 | 2,975 | 2000 | 0.0721 | 45 | 2,650 |
| 2nd Year Fall | 2,250 | 1,000 | 0.0466 | 3,456 | 2000 | 0.0721 | 38 | 2,562 |
| 2nd Year Spring | 2,250 | 1,000 | 0.0466 | 3,436 | 2000 | 0.0721 | 33 | 2,499 |
| 3rd Year Fall | 2,750 | 1,000 | 0.0466 | 3,917 | 2500 | 0.0721 | 26 | 3,014 |
| 3rd Year Spring | 2,750 | 1,000 | 0.0466 | 3,897 | 2500 | 0.0721 | 21 | 2,936 |
| 4th Year Fall | 2,750 | 1,000 | 0.0466 | 3,870 | 2500 | 0.0721 | 14 | 2,827 |
| 4th Year Spring | 2,750 | 1,000 | 0.0466 | 3,850 | 2500 | 0.0721 | 9 | 2,748 |
| | | | **Total** | **28,397** | | | **Total** | **21,949** |
| | | | | **Total due at the beginning of repayment—combined** | | | | **50,345** |

As this example demonstrates, at the identical school, the combined parent-student debt upon entering repayment would be higher for the family of Student B than the total debt of Student A because of the higher interest rates (currently 7.21 percent for Direct PLUS loans and 4.66 percent for Direct Subsidized and Unsubsidized loans) and origination fees (currently 4.28 percent for Direct PLUS loans [5] and 1.72 percent for Direct Subsidized and Unsubsidized loans [6]). This example is only meant to show the potential difference between two students using a combination of Direct Subsidized, Direct Unsubsidized, and Direct PLUS loans to fund their education. The example does not address choices individual borrowers may make to manage their student loan debt or the benefits of increased access to PLUS loans, as discussed below. These tables also do not account for a family choosing a less expensive school to account for the lack of access to PLUS loans. These examples also only apply to Parent PLUS loans.

Borrowers may choose to make payments on their loans while in school to decrease the accumulation of interest and decrease the amount of loan debt owed after leaving school. Furthermore, loan disbursement dates and amounts vary by campus. Individual debt loads for borrowers under any loan program will be impacted by borrower behavior.

As borrowers enter into repayment, their loan payments and principal balance amounts will also be impacted by borrower behavior. Benefits such as loan consolidation, forbearance, deferment, and loan forgiveness can have an impact on their overall loan payments.

Increased access to PLUS loans may allow some students to continue their attendance in programs that they otherwise would not be able to afford. While some applicants may use additional Direct Unsubsidized loans to cover their educational expenses after their applicant parents have been denied PLUS loans, others may be unable to make up the difference because of annual or lifetime aggregate limits on Stafford loans. This could result in a student having to withdraw from a particular education program, transfer to another program or institution, or find additional means of financing his or her education, such as private student loans. Since PLUS loans can be borrowed up to the cost of attendance, they may be used to more fully cover funding gaps for dependent students who have exhausted their annual or lifetime aggregate limits for Direct Subsidized and Unsubsidized loans or allow students to attend a more expensive institution. PLUS loans often help lower-income students who may lack the personal or family resources to pay for college.

PLUS loans are generally a better option for students than private student loans. PLUS loans have fixed interest rates and offer more flexibility in respect to repayment plans (such as extended and graduated repayment plans). PLUS loans also offer important consumer protections such as deferments for unemployment, active

[5] Origination fees for Direct PLUS loans will increase to 4.292 percent on October 1, 2014.

[6] Origination fees for Direct Subsidized and Unsubsidized loans will increase to 1.073 percent on October 1, 2014.

duty military service, and economic hardship; and cancellation for occurrences such as death, total and permanent disability or school closure. Private loans, in contrast, are not required to provide such borrower benefits and protections. Private loans also typically have variable interest rates that cost most for those who can least afford them.''

Applicants with an adverse credit history who qualify for a PLUS Loan by demonstrating extenuating circumstances will be required to participate in loan counseling provided by the Department. This requirement could help PLUS loan applicants to make informed decisions and to avoid over-borrowing for their own or their child's education.

Net Budget Impacts

The proposed regulations are not estimated to have a significant net budget impact over the loan cohorts from 2014 to 2024. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

In general, student loan cost estimates are developed using OMB's Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost-of-credit programs. Accordingly, we believe that it is the appropriate methodology to use in developing estimates for the proposed regulations. That said, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

The operational changes to adverse credit history determinations made in 2011 have already been incorporated into the Department's budget baseline. The changes in the proposed regulations, including (1) using $2,085 as an upfront threshold amount in the determination of an adverse credit history, and (2) the reduced look-back period of two years for accounts in collection and accounts that have been charged off to trigger a determination of adverse credit, would likely decrease the number of PLUS loan applicants denied loans based on an adverse credit history determination. This could increase PLUS loan volumes, and decrease the amount of additional Direct Unsubsidized loans taken out by student borrowers whose parents cannot obtain PLUS loans because of adverse credit determinations. Generally, an increase in PLUS loan volume results in net budget savings because of the negative subsidy rate on the overall PLUS loan portfolio.

However, loans made to borrowers who would have been considered to have an adverse credit history before the changes in the proposed regulations could have a higher incidence of default or could be difficult for borrowers to repay. If that were the case, potential savings from any increased PLUS loan volume resulting from the proposed regulations would be reduced or even reversed. The Department does not have data to determine if borrowers who would have been considered to have an adverse credit history in the absence of the proposed regulations have a greater incidence of default or repayment difficulty, but, if a subsidy rate were available for this subgroup of PLUS borrowers, it would likely differ from the overall PLUS subsidy rate. The budget baseline already reflects the $2,085 threshold amount as currently used in the Department's process for considering requests for reconsideration and most of the charged-off accounts or accounts in collection that would result in an adverse credit determination fall within the two-year period that would still be in effect under the proposed regulations. These factors could limit the increase in PLUS loan volume associated with the changes in the proposed regulations. Therefore, the Department has not estimated significant savings from the proposed regulations.

**Assumptions, Limitations, and Data Sources**

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including the Fiscal Operations Report and Application to Participate (FISAP) from institutions; and data from a range of surveys conducted by the National Center for Education Statistics such as the 2011–2012 National Postsecondary Student Aid Survey and the 2004/09 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

**Accounting Statement**

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table 3, we have prepared an accounting statement showing the classification of the expenditures associated with the proposed regulations. Expenditures are classified as transfers from the Federal Government to student loan borrowers.

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES ($ IN MILLIONS, 7% AND 3% DISCOUNT RATES)

| Category | Benefits | |
|---|---|---|
| Improved clarity in process for adverse credit determinations for PLUS loans | Not quantified | |
| Category | Costs | |
| | 7% | 3% |
| Costs of compliance with paperwork requirements | $4.40 | $4.43 |

**Alternatives Considered**

The Department considered various alternatives in developing these proposed regulations, including different definitions of adverse credit history for parents and graduate students, criteria regarding the borrower's ability to repay as part of the adverse credit history definition, indexing the $2,085 amount to the rate of inflation, increasing the delinquency period of 90 or more days past due, and increasing the length of time for the look-back period for debts that are in collection or charged off.

Some of the non-Federal negotiators contended that there should be different eligibility standards for PLUS loans for parents and students. These negotiators argued that graduate and professional students should be eligible for PLUS loans without application of the adverse credit history criteria.

Alternatively, one non-Federal negotiator requested that the Department consider defining ''adverse credit history'' differently for graduate and professional student PLUS loan borrowers than for parent PLUS loan borrowers.

We considered these proposals but concluded that the statutory requirement that a PLUS loan borrower not have an adverse credit history applies equally to student and parent borrowers.

Some non-Federal negotiators recommended including criteria regarding the borrower's ability to repay in the ''adverse credit history'' definition, to prevent overborrowing of PLUS loans. However, the Department determined that the HEA does not currently authorize consideration of the borrower's ability to repay in the determination of an adverse credit history.

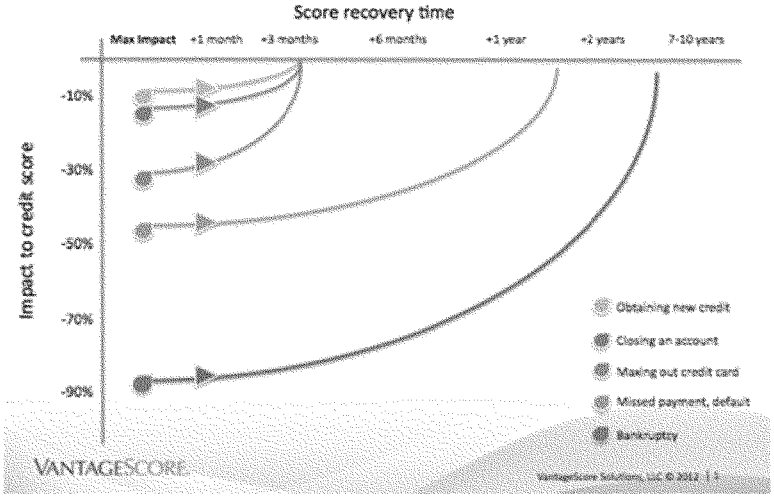
Several of the non-Federal negotiators recommended that the Department index the $2,085 debt threshold amount to the rate of inflation. The majority of these negotiators suggested that the Department use the CPI, a measure of inflation determined by the Bureau of Labor Statistics, as the basis for the indexing.

The Department considered using the CPI–U as the basis to index, but ultimately decided not to include this in the proposed regulations. Instead, the Department invites public comment on what an appropriate adjustment would be to take into account the effects of inflation, as well as suggestions for other bases for adjusting the $2,085 threshold amount over time, including measures of growth or decline in other types of consumer debt.

Some of the non-Federal negotiators argued that the proposed delinquency period of 90 or more days past due is too short for adverse credit history determinations. These negotiators recommended extending the period to 120 days or 180 days past due. They asserted that credit reports often have errors that may not be corrected during a 90-day timeframe.

In the absence of a consistent industry-wide standard, we decided to maintain the standard of 90 or more days delinquent in the proposed regulations. We rely on credit reports to determine whether an applicant is delinquent on a debt, as the number of days a debt is past due is included on an individual's credit report until an account is placed in collection. Based on our experience, most creditors send accounts to collection once they are 90 days' delinquent. Once an account is placed in collection, the number of days past due is generally not reflected on the credit report. Therefore, a standard beyond the current 90-day standard would be more difficult to track. And a borrower with a longer delinquency would still be able to request reconsideration of the PLUS loan denial under the process for determining if extenuating circumstances exist, which would allow the borrower the opportunity to explain the individual circumstances raised by the negotiators.

Non-Federal negotiators made varying proposals regarding the look-back period for debts that are in collection or charged off. Some negotiators recommended a one-year look-back period while other negotiators suggested a three-year look-back period. The Department considered these proposals but determined that it was appropriate to propose a two-year look-back period. Based on the Department's review of consumer credit standards, the age of a consumer's delinquent or defaulted debt bears significantly on a consumer's credit history. While varying substantially based on the type of credit infraction, typically most negative items have little impact after two years. Furthermore, as the chart from VantageScore shows below, a decline in a consumer's credit score from a substantially severe infraction such as a default can be remediated within about 18 months.




The Department's adverse credit history evaluation of 90-day debt delinquencies, including charge-offs and collections, is based upon an account's current status, but it does not take into account whether the debts have been delinquent for a long period of time or entered collections or were charged off years ago. Several other State student lenders, Federal agencies, and some other lenders take into account the age of the delinquent debt in question when underwriting. For example, the Maine Loan, a product offered by the Maine Educational Loan Authority, requires that applicants have no record of a paid or unpaid charge-off in the last two years.[7] Connecticut Higher Education Supplemental Loan Authority (CHESLA) loans contain a similar two-year look back for debts over 90 days delinquent as well as for charge-offs and collections.[8] At the Federal level, Department of Agriculture farm loans for operation and ownership employ a three-year look back standard.[9] Presumably, these lenders do not find that older delinquent debts impact the borrower's ability or willingness to repay a new loan.

*Initial Regulatory Flexibility Analysis*

The proposed regulations will affect institutions that participate in the title IV, HEA programs, including alternative certification programs not housed at institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation, with total annual revenue below $7,000,000. The SBA Size Standards define nonprofit institutions as ''small organizations'' if they are independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they are institutions controlled by governmental entities with populations below 50,000. The number of title IV, HEA-eligible institutions that are small entities would be limited because of the revenues involved in the sector that would be affected by the proposed regulations and the concentration of ownership of institutions by private owners or public systems. However, the definition of ''small organization'' does not factor in revenue. Accordingly, several of the entities subject to the proposed regulations are ''small entities,'' and we have prepared this Initial Regulatory Flexibility Analysis.

*Description of the Reasons That Action by the Agency Is Being Considered*

The proposed regulations would update the standards for determining whether a parent or student has an adverse credit history for purposes of eligibility for a Direct PLUS Loan. The proposed regulations would require PLUS loan counseling for a parent or student with an adverse credit history who obtains a PLUS loan as a result of the Secretary's determination that extenuating circumstances exist.

*Succinct Statement of the Objectives of, and Legal Basis for, the Regulations*

Current Direct Loan regulations (34 CFR 685.200(b) and (c)) specify that graduate and professional students, and parents borrowing on behalf of their dependent children, may borrow PLUS loans. PLUS loan borrowers must meet applicable eligibility requirements.

*Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Regulations Will Apply*

The proposed regulations would affect the approximately 7,500 institutions that participate in the title IV, HEA loan programs, as the amount and composition of title IV, HEA program aid that is available to students affects students' enrollment decisions and institutional choice. Approximately 60 percent of institutions of higher education qualify as small entities. Using data from the Integrated Postsecondary Education Data System, we estimate that 4,365 institutions qualify as small entities—1,891 are nonprofit institutions, 2,196 are for-profit institutions with programs of two years or less, and 278 are for-profit institutions with four-year programs.

*Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record*

The proposed regulations would not change the reporting requirements related to PLUS loans for institutions. Accordingly, the Department does not expect a change in institutional burden from the proposed regulations. However, PLUS loan borrowers with an adverse credit history who request reconsideration based on extenuating circumstances must provide satisfactory documentation that extenuating circumstances exist, and would be required to complete loan counseling offered by the Secretary.

[7] *http://www.mela.net/maine-loan.php.*

[8] *http://www.chesla.org/Customer-Content/WWW/CMS/files/071137_2011_annualreport.pdf.*

[9] *http://www.rurdev.usda.gov/SupportDocuments/CA-SFH-GRHUnderwritingGuide.pdf.*

*Identification, to the Extent Practicable, of all Relevant Federal Regulations That May Duplicate, Overlap or Conflict With the Proposed Regulations*

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations.

*Alternatives Considered*

As described above, the Department conducted a negotiated rulemaking process to develop the proposed regulations and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

**Paperwork Reduction Act of 1995**

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides 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 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. The table at the end of this section summarizes the estimated burden on small entities, primarily institutions and applicants, arising from the paperwork associated with the proposed regulations.

Section 685.200 contains information collection requirements. Under the PRA, the Department has submitted a copy of the section, and will submit the Information Collections Request (ICR) to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations. The burden associated with the new regulatory provisions would be accounted for in a new information collection.

The current regulations allow PLUS loan applicants who have been denied a PLUS loan due to an adverse credit history determination to submit documentation of extenuating circumstances to the Secretary and request reconsideration of the loan application. The proposed regulations would require that a PLUS loan applicant who is determined to be eligible for a PLUS loan after reconsideration complete loan counseling offered by the Secretary.

*Section 685.200 Borrower Eligibility*

*Requirements:* Under proposed regulations in § 685.200(b)(5) and (c)(2)(viii)(A)(*3*), we have proposed that, in addition to providing documentation to the Secretary demonstrating that extenuating circumstances exist, an applicant who is determined to have an adverse credit history would also have to complete PLUS loan counseling to receive the PLUS loan. We believe loan counseling would help these PLUS loan applicants to understand the ramifications of incurring this additional debt.

*Burden Calculation:* We estimate that during the 2013–14 award year there were 785,734 PLUS loan denials. Our records indicate that, of those PLUS loan denials, 147,400 PLUS loans were approved after reconsideration based on extenuating circumstances. While the total number of requests for reconsideration (whether approved or disapproved) is not available at this time, we estimate that the total number of approved requests, divided by 90 percent, approximates the total number. We estimate that, on average, each borrower's submission of documentation for the Secretary's consideration would take 1 hour per submission.

Our 2013–14 data show that there were 8,452 requests from graduate or professional students at private for-profit institutions for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 8,452 hours (7,607 approved reconsideration requests, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 23,804 requests from graduate or professional students at private nonprofit institutions for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 23,804 hours (21,424 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 14,056 requests from graduate or professional students for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 14,056 hours (12,650 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 1,672 requests from graduate or professional students at foreign institutions for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 1,672 hours (1,505 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

The total increase in burden for § 685.200(b)(5) would be 47,984 hours under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 8,458 submissions from parents of students at private for-profit institutions for reconsideration of a PLUS loan application based on extenuating circumstances; therefore, we estimate the burden would increase by 8,458 hours (7,612 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 43,008 submissions from the parents of students at private nonprofit institutions for reconsideration based on extenuating circumstances; therefore, we estimate the burden would increase by 43,008 hours (38,707 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 64,118 requests from parents of students at public institutions for reconsideration based on extenuating circumstances; therefore, we estimate the burden would increase by 64,118 hours (57,706 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 210 requests from parents of students at foreign institutions for reconsideration based on extenuating circumstances; therefore, we estimate the burden would increase by 210 hours

(189 approved requests for reconsideration, divided by 90 percent, multiplied by 1 hour per request) under OMB Control Number 1845–NEW1.

The total increase in burden for § 685.200(c)(2)(viii)(A)(*3*) would be 115,794 hours under OMB Control Number 1845–NEW1.

We estimate the burden associated with the loan counseling requirement under proposed § 685.200(c)(2)(viii)(A)(*3*). All graduate and professional students are currently required to undergo PLUS loan entrance counseling. We estimate that the additional loan counseling requirements for graduate and professional students who qualify for PLUS loans under extenuating circumstances would, on average, increase loan counseling by 0.17 hours (10 minutes) for each graduate or professional PLUS loan applicant who qualifies for a PLUS loan due to extenuating circumstances.

Our 2013–14 data show that there were 7,607 approved requests for reconsideration based on extenuating circumstances from graduate or professional students at private for-profit institutions; therefore, we estimate the burden would increase by 1,293 hours (7,607 approved requests for reconsideration multiplied by 0.17 hours per additional counseling components) under OMB Control Number 1845–NEW1.

Under proposed § 685.200(b)(5), our 2013–14 data show that there were 21,424 approved requests for reconsideration based on extenuating circumstances from graduate or professional students at private nonprofit institutions; therefore, we estimate the burden would increase by 3,642 hours (21,424 approved requests for reconsideration multiplied by 0.17 hours per additional counseling components) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 12,650 approved requests for reconsideration based on extenuating circumstances from graduate or professional students at public institutions; therefore, we estimate the burden would increase by 2,151 hours (12,650 approved requests for reconsideration multiplied by 0.17 hours per additional counseling components) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 1,505 approved requests for reconsideration based on extenuating circumstances from graduate or professional students at foreign institutions; therefore, we estimate the burden would increase by 256 hours (1,505 approved requests for reconsideration multiplied by 0.17 hours per additional counseling components) under OMB Control Number 1845–NEW1.

The total increase in burden for § 685.200(b)(5) would be 7,342 hours under OMB Control Number 1845–NEW1.

Under the proposed regulations, there would be a new requirement that a parent PLUS loan applicant who is determined to be eligible for a loan based on extenuating circumstances would need to participate in loan counseling before receiving a loan. Therefore, we estimate that, on average, each parent PLUS loan borrower who is determined to be eligible on the basis of extenuating circumstances would take 45 minutes to complete a PLUS loan counseling session.

Our 2013–14 data show that there were 7,612 approved requests for reconsideration from parents of students at private for-profit institutions based on extenuating circumstances; therefore, we estimate the burden would increase by 5,709 hours (7,612 approved requests for reconsideration multiplied by 0.75 hours per PLUS loan counseling session) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 38,707 approved requests for reconsideration from the parents of students at private nonprofit institutions based on extenuating circumstances; therefore, we estimate the burden would increase by 29,030 hours (38,707 approved requests for reconsideration times 0.75 hours per PLUS loan counseling session) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 57,706 approved requests for reconsideration from parents of students at public institutions based on extenuating circumstances; therefore, we estimate the burden would increase by 43,280 hours (57,706 approved requests for reconsideration multiplied by 0.75 hours per PLUS loan counseling session) under OMB Control Number 1845–NEW1.

Our 2013–14 data show that there were 189 approved requests for reconsideration from parents of students at foreign institutions based on extenuating circumstances; therefore, we estimate the burden would increase by 142 hours (189 approved requests for reconsideration multiplied by 0.75 hours per PLUS loan counseling session) under OMB Control Number 1845–NEW1.

The total increase in burden for § 685.200(c)(2)(viii)(A)(*3*) would be 78,161 hours under OMB Control Number 1845–NEW1.

Overall, burden would increase by 249,281 hours under OMB Control Number 1845–NEW1.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on applicants and borrowers, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $4,063,280, as shown in the chart below. This cost was based on an hourly rate of $16.30 for applicants and borrowers.

COLLECTION OF INFORMATION

| Regulatory section | Information collection | OMB control number and estimated burden [change in burden] | Estimated costs |
|---|---|---|---|
| § *685.200 (b)(5) and 685.200* (c)(1) (viii)(A)(3) *Borrower Eligibility.* | Revises language requiring documentation for extenuating circumstances and augments PLUS loan counseling for graduate and professional students to increase student financial literacy. The proposed regulations also require parent PLUS loan counseling. | OMB 1845–NEW1. We estimate that the burden would increase by 249,281 hours. | $4,063,280 |

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of

Education, by fax to (202) 395–6974 or send your comments by email to *OIRA_DOCKET@omb.eop.gov.* You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for this collection. In preparing your comments you may want to review the ICR, which is available at *www.reginfo.gov.* On *www.reginfo.gov,* click on ''Information Collection Review.'' This proposed collection is identified as proposed collection 1845–NEW1.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by September 8, 2014. This does not affect the deadline for your comments to us on the proposed regulations.

**Intergovernmental Review**

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

**Assessment of Educational Impact**

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

*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 one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

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(Catalog of Federal Domestic Assistance Number: 84.268 William D. Ford Federal Direct Loan Program)

**List of Subjects in 34 CFR Part 685**

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

Dated: August 4, 2014.

**Arne Duncan**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 685 of title 34 of the Code of Federal Regulations as follows:

## PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 1. The authority citation for part 685 continues to read as follows:

**Authority:** 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 2. Section 685.200 is amended by:

■ a. In paragraph (b)(5), removing the words ''of paragraph (c)(1)(vii)'' and adding, in their place, the words ''that apply to a parent under paragraphs (c)(2)(viii)(A) through (D)''; and

■ b. Revising paragraph (c) to read as follows:

**§ 685.200 Borrower eligibility.**

* * * * *

(c) *Parent PLUS borrower*—(1) *Definitions.* The following definitions apply to this paragraph (c):

(i) *Charged off* means a debt that a creditor has written off as a loss, but that is still subject to collection action.

(ii) *In collection* means a debt that has been placed with a collection agency by a creditor or that is subject to more intensive efforts by a creditor to recover amounts owed from a borrower who has not responded satisfactorily to the demands routinely made as part of the creditor's billing procedures.

(2) *Eligibility.* A parent is eligible to receive a Direct PLUS Loan if the parent meets the following requirements:

(i) The parent is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student under 34 CFR part 668.

(ii) The parent provides his or her and the student's social security number.

(iii) The parent meets the requirements pertaining to citizenship and residency that apply to the student under 34 CFR 668.33.

(iv) The parent meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.32(g).

(v) The parent complies with the requirements for submission of a Statement of Educational Purpose that apply to the student under 34 CFR part 668, except for the completion of a Statement of Selective Service Registration Status.

(vi) The parent meets the requirements that apply to a student under paragraph (a)(1)(iv) of this section.

(vii) The parent has completed repayment of any title IV, HEA program assistance obtained by fraud, if the parent has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance.

(viii)(A) The parent—

(*1*) Does not have an adverse credit history;

(*2*) Has an adverse credit history but has obtained an endorser who does not have an adverse credit history; or

(*3*) Has an adverse credit history but documents to the satisfaction of the Secretary that extenuating circumstances exist and completes PLUS loan counseling offered by the Secretary.

(B) For purposes of this paragraph (c), an adverse credit history means that the parent—

(*1*) Has one or more debts with a total combined outstanding balance greater than $2,085, as may be adjusted over time on a basis determined by the Secretary, that are 90 or more days delinquent as of the date of the credit report, or that have been placed in

collection or charged off, as defined in paragraph (c)(1) of this section, during the two years preceding the date of the credit report; or

(*2*) Has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a debt under title IV of the Act during the five years preceding the date of the credit report.

(C) For purposes of this paragraph (c), the Secretary does not consider the absence of a credit history as an adverse credit history and does not deny a Direct PLUS loan on that basis.

(D) For purposes of this paragraph (c), the Secretary may determine that extenuating circumstances exist based on documentation that may include, but is not limited to—

(*1*) An updated credit report for the parent; or

(*2*) A statement from the creditor that the parent has repaid or made satisfactory arrangements to repay a debt that was considered in determining that the parent has an adverse credit history.

(*3*) For purposes of paragraph (c)(2) of this section, a ''parent'' includes the individuals described in the definition of ''parent'' in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

[FR Doc. 2014–18673 Filed 8–7–14; 8:45 am]

**BILLING CODE 4000–01–P**

# FEDERAL REGISTER

Vol. 79 Friday,

No. 153 August 8, 2014


Part VII

## The President

Executive Order 13675—Establishing the President's Advisory Council on Doing Business in Africa

Federal Register
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Friday, August 8, 2014

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13675 of August 5, 2014**

## Establishing the President's Advisory Council on Doing Business in Africa

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote broad-based economic growth and job creation in the United States and Africa by encouraging U.S. companies to trade with and invest in Africa, it is hereby ordered as follows:

**Section 1**. *Policy.* The United States recognizes that Africa is a region of growing economic opportunity and innovation and aims to expand a trade and investment partnership that is grounded in shared interests and mutual responsibility. Africa offers a diverse and broad range of trade and investment opportunities in national and regional markets. The U.S. Government will encourage U.S. companies to seize the trade and investment opportunities offered by Africa's national and regional markets and help drive inclusive and sustained economic growth and the region's economic expansion, while also creating jobs here in the United States.

**Sec. 2**. *Establishment.* Not later than 180 days after the date of this order, the Secretary of Commerce shall establish the President's Advisory Council on Doing Business in Africa (Advisory Council).

**Sec. 3**. *Membership.* (a) The Advisory Council shall consist of not more than 15 private sector corporate members, including small businesses and representatives from infrastructure, agriculture, consumer goods, banking, services, and other industries. The Advisory Council shall be broadly representative of the key industries with business interests in the functions of the Advisory Council as set forth in section 4 of this order. Appointments to the Advisory Council shall be made without regard to political affiliation.

(b) Members of the Advisory Council shall be appointed by the Secretary of Commerce, in consultation with the Trade Promotion Coordinating Committee (TPCC), which was authorized by statute in 1992 (15 U.S.C. 4727) and established by Executive Order 12870 of September 30, 1993.

**Sec. 4**. *Functions.* (a) The Advisory Council shall advise the President, through the Secretary of Commerce, on strengthening commercial engagement between the United States and Africa, with a focus on advancing the President's Doing Business in Africa Campaign as described in the U.S. Strategy Toward Sub-Saharan Africa of June 14, 2012.

(b) In providing the advice described in subsection (a) of this section, the Advisory Council shall provide information, analysis, and recommendations to the President that address the following, in addition to other topics deemed relevant by the President, the Secretary of Commerce, or the Advisory Council:

(i) creating jobs in the United States and Africa through trade and investment;

(ii) developing strategies by which the U.S. private sector can identify and take advantage of trade and investment opportunities in Africa;

(iii) building lasting commercial partnerships between the U.S. and African private sectors;

(iv) facilitating U.S. business participation in Africa's infrastructure development;

(v) contributing to the growth and improvement of Africa's agricultural sector by encouraging partnerships between U.S. and African companies to bring innovative agricultural technologies to Africa;

(vi) making available to the U.S. private sector an accurate understanding of the opportunities presented for increasing trade with and investment in Africa;

(vii) developing and strengthening partnerships and other mechanisms to increase U.S. public and private sector financing of trade with and investment in Africa;

(viii) analyzing the effect of policies in the United States and Africa on U.S. trade and investment interests in Africa;

(ix) identifying other means to expand commercial ties between the United States and Africa; and

(x) building the capacity of Africa's young entrepreneurs to develop trade and investment ties with U.S. partners.

**Sec. 5**. *Administration.* (a) The Department of Commerce shall provide funding and administrative support for the Advisory Council to the extent permitted by law and within existing appropriations.

(b) Members of the Advisory Council shall serve without either compensation or reimbursement of expenses.

(c) The Secretary of Commerce shall designate a senior officer or employee of the Department of Commerce to serve as the Executive Director for the Advisory Council.

(d) The Secretary of Commerce shall consult with the TPCC on matters and activities pertaining to the Advisory Council, including on activities related to implementation of the advice of the Advisory Council. The Secretary of Commerce shall invite representatives of TPCC agencies to attend meetings of the Advisory Council when issues relevant to their responsibilities are to be considered.

**Sec. 6**. *Termination.* The Advisory Council shall function for such period as may be necessary but shall terminate 2 years after the date of this order, unless extended by the President.

**Sec. 7**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Insofar as the Federal Advisory Committee Act (5 U.S.C. App.) (the ''Act'') may apply to the Advisory Council, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary of Commerce in accordance with the guidelines that have been issued by the Administrator of General Services.

THE WHITE HOUSE,
*August 5, 2014.*

[FR Doc. 2014–18998
Filed 8–7–14; 11:15 am]
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